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भारत का राजपत्र
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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 22 अगस्त, 2020

का.आ. 920.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 20 की उप-धारा (1) के साथ पठित धारा 19 के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, भारतीय स्टेट बैंक के उप-प्रबंध निदेशक श्री अश्विनी भाटिया (जन्म तिथि: 5.5.1962) को उनके पदभार ग्रहण करने की तारीख से और अधिवर्षिता की आयु (अर्थात 31.5.2022) प्राप्त करने तक अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय स्टेट बैंक में प्रबंध निदेशक नियुक्त करती है।

[फा. सं. 4/1/2020-बीओ-I]

एस. आर. मेहर, उप सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 22nd August, 2020

S.O. 920.—In exercise of the powers conferred by clause (b) of section 19 read with sub-section (1) of section 20 of the State Bank of India Act, 1955 (23 of 1955), the Central Government, hereby appoints Shri Ashwani Bhatia (date of birth: 5.5.1962), Deputy Managing Director, State Bank of India as Managing Director, State Bank of India with effect from the date of assumption of office and up to the date of his attaining the age of superannuation (*i.e.,* 31.5.2022), or until further orders, whichever is earlier.

[F. No. 4/1/2020-BO.I]

S. R. MEHAR, Dy. Secy.

नई दिल्ली, 3 सितम्बर, 2020

का.आ. 921.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1980 के पैरा 8 के उप-पैरा (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतदद्वारा, श्री एस. हरिशंकर, प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी, पंजाब एंड सिंध बैंक, जिन्हें दिनांक 3.9.2020 की प्रभावी तिथि से स्वैच्छिक आधार पर सेवानिवृत्ति की अनुमति दी गई है, के स्थान पर केनरा बैंक के कार्यपालक निदेशक श्री एस. कृष्णन को पदभार ग्रहण करने की तारीख से उनकी अधिवर्षिता की आयु प्राप्त करने की तारीख (अर्थात 31.5.2022) तक अथवा अगले आदेशों तक, जो भी पहले हो, पंजाब एंड सिंध बैंक में प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी के पद पर नियुक्त करती है।

[फा. सं. 4/2/2018-बीओ-I]

एस. आर. मेहर, उप सचिव

New Delhi, the 3rd September, 2020

S.O. 921.—In exercise of powers conferred by clause (a) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, read with sub-paragraph (1) of paragraph 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1980, Central Government hereby appoints Shri S. Krishnan, Executive Director in Canara Bank as Managing Director and Chief Executive Officer in Punjab and Sind Bank, with effect from the date of assumption of office, and up to the date of his attaining the age of superannuation (*i.e.*, 31.5.2022), or until further orders, whichever is earlier, *vice* Shri S. Harisankar, Managing Director and Chief Executive Officer, Punjab and Sind Bank who has been permitted to retire on voluntary basis with effect from 3.9.2020.

[F. No. 4/2/2018-BO-I]

S. R. MEHAR, Dy. Secy.

नई दिल्ली, 28 सितम्बर, 2020

का.आ. 922.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम 1970 के पैरा 3 के उप-पैरा (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उपधारा (3) के खंड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार, एतदद्वारा, कॉलम (2) में विनिर्दिष्ट व्यक्तियों के स्थान पर कॉलम (3) में विनिर्दिष्ट व्यक्तियों को कॉलम (1) में निर्दिष्ट बैंकों के बोर्ड में तत्काल प्रभाव से अथवा अगले आदेशों तक, निदेशक के पद पर नामित करती है:

	(1)	(2)	(3)
1.	सेंट्रल बैंक ऑफ इंडिया	श्री थोमस मैथ्यू	श्री पी. जे. थोमस (जन्म तिथि: 2.1.1959)
2.	यूको बैंक	डॉ. अरविन्द शर्मा	डॉ. तुली रॉय (जन्म तिथि: 23.12.1965)

[फा. सं. 6/3/2011-बीओ-I]

संजय कुमार मिश्रा, अवर सचिव

New Delhi, the 28th September, 2020

S.O. 922.—In exercise of the powers conferred by clause (c) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, read with sub-paragraph (1) of paragraph 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government hereby nominates the persons specified in column (3) of the table below as Director on the Board of the banks specified in column (1) thereof, in place of the persons specified in column (2) of the said table, with immediate effect and until further orders:

	(1)	(2)	(3)
1.	Central Bank of India	Shri Thomas Mathew	Shri P. J. Thomas (date of birth: 2.1.1959)
2.	UCO Bank	Dr Arvind Sharma	Dr Tuli Roy (date of birth: 23.12.1965)

[F. No. 6/3/2011-BO.I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 12 अक्तूबर, 2020

का.आ. 923.—आरबीआई द्वारा बैंककारी विनियमन अधिनियम, 1949 की धारा 22(4) के अंतर्गत लाइसेंस को रद्द करने के निर्णय से असंतुष्ट होने पर उनके निर्णय के विरुद्ध सहकारी बैंकों द्वारा दायर की गई अपील पर बैंककारी विनियमन अधिनियम, 1949 की धारा 22(5) के अंर्तगत निर्णय लेने हेतु केन्द्रीय सरकार द्वारा श्री सुधीर श्याम, आर्थिक सलाहकार, वित्तीय सेवाएं विभाग, वित्त मंत्रालय, भारत सरकार को नामोदिष्ट किया जाता है।

[फा. सं. 7/103/2020-बीओए-I]

ए. के. घोष, अवर सचिव

New Delhi, the 12th October, 2020

S.O. 923.—Shri Sudhir Shyam, Economic Advisor in the Department of Financial Services, Ministry of Finance, Government of India is designated by the Central Government to decide the appeal preferred by Cooperative Bank under Section 22(5) of the Banking Regulation Act, 1949, aggrieved by the decision of the RBI cancelling its license under Section 22(4) of the Banking Regulation Act, 1949.

[F. No. 7/103/2020-BOA-I]

A. K. GHOSH, Under Secy.

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 14 अक्तूबर, 2020

का.आ. 924.—केन्द्र सरकार, एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 की अधिनियम संख्या 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार, सरकारी आदेश सं. ई-एचडी 28 सीआईडी 2020, बंगलुरू, दिनांक 21 मई, 2020 के

माध्यम से प्राप्त सहमति से अवैध सॉफ्टवेयर के प्रचालन से संबंधित और रेलवे टिकटों से जुड़े राजागोपालानगर पुलिस स्टेशन, बंगलुरू सिटी में भारतीय दण्ड संहिता की धारा 419, 420 सपठित 34 (1860 का अधिनियम सं.45) और सूचना प्रौद्योगिकी अधिनियम, 2000 (2000 की अधिनियम सं. 21) की धारा 43, 65, 66, 66 (सी), 66(डी),70 के अंतर्गत दर्ज मामला अपराध सं.16/2020 के संबंध में किए गए अपराध(धों) के अन्वेषण करने के लिए तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा एवं/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार के क्रम में किए गए किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त कर्नाटक राज्य में करती है।

[फा. सं. 228/23/2020-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 14th October, 2020

S.O. 924.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Karnataka, issued vide Government Order No. E-HD 28 CID 2020, Bengaluru, dated 21st May, 2020, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Karnataka for investigation into the offence(s) relating to the case Crime No. 16/2020, u/s 419, 420 r/w 34 of Indian Penal Code (Act No. 45 of 1860) and u/s 43, 65, 66, 66(c), 66(d), 70 of Information Technology Act, 2000 (Act No. 21 of 2000) of Rajagopalanagar Police Station, Bengaluru City pertaining to the operation of illegal software and cornering Railway tickets, and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/23/2020-AVD-II]

S. P. R. TRIPATHI, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 5 अक्तूबर, 2020

का.आ. 925.—पेट्रोलियम और खनिज पाइपलाइनें (भूमि में प्रयोक्ता के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50), (इसके बाद इसे उक्त अधिनियम कहा गया है) की धारा 2 की उप–धारा (अ) के अनुसरण में केन्द्रीय सरकार नीचे दी गयी सारणी के स्तम्भ (1) में उल्लेखित व्यक्ति को मैसर्स रिलायंस इण्डस्ट्रीज लिमिटेड (आर.आई.एल.) हेतु उक्त सारणी के स्तम्भ (3) में उल्लेखित पेट्रोलियम प्रोडक्ट पाइपलाइनों के लिए स्तम्भ (2) में उल्लेखित क्षेत्रों के संबंध में उक्त अधिनियम के तहत सक्षम प्राधिकारी के कार्यों का निर्वहन करने के लिए एतदद्वारा प्राधिकृत करती है :-

सारणी

व्यक्ति का नाम और पता	क्षेत्राधिकार	पेट्रोलियम प्रोडक्ट पाइपलाइन (पाइपलाइनों) के नाम
(1)	(2)	(3)
श्री बी. एस. दवे, अपर समाहर्ता (सेवानिवृत्त), सक्षम प्राधिकारी, रिलायंस इण्डस्ट्रीज लिमिटेड, प्रथम तल, आनंद महल टावर – I, श्रीजी आरकेड के सामने, आनंद महल रोड, अडाजन, सुरत - 395009, गुजरात	गुजरात राज्य के सभी जिले	दहेज–गांधार–बडौदा पाइपलाइनें ओफशोर एसबीएम पाइपलाइनें

2. गुजरात राज्य में मैसर्स रिलायंस इण्डस्ट्रीज लिमिटेड के लिये दिनांक 22.04.2017 को भारत के राजपत्र में प्रकाशित दिनांक 20.04.2017 की अधिसूचना सा.आ. 964 द्वारा पूर्व में अधिसूचित सक्षम प्राधिकारी, श्री आर. एम. पटेल, (सेवानिवृत्त भा प्र से) को निरस्त किया जाता है।

3. यह अधिसूचना जारी होने की दिनांक से लागू होगी।

[फा. सं. आर-11025(15)/13/2020-ओआर-I/ई-34808]

पी. सोमाकुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 5th October, 2020

S.O. 925.—In pursuance of sub-section (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter called the said Act), the Central Government hereby authorizes the person mentioned in column (1) of the table given below to perform the functions of the Competent Authority under the said Act for M/s. Reliance Industries Limited (RIL), in respect of areas mentioned in column (2) for the petroleum product pipelines mentioned in Colum (3) of the said Table:-

TABLE

Name and Address of the Person	Area of Jurisdiction	Name of Petroleum Product Pipeline(s)
(1)	(2)	(3)
Shri B. S. Dave, Additional Collector (Retired), Competent Authority, Reliance Industries Limited, 1st Floor, Anand Mahal Tower – I, Opp. Shreeji Arcade, Anand Mahal Road, Adajan, Surat – 395009, Gujarat	All districts of Gujarat State	Dahej – Gandhar – Baroda Pipelines
		Offshore SBM Pipelines

2. Earlier notified Competent Authority for M/s. Reliance Industries Limited in the State of Gujarat, Shri R. M. Patel, Retired IAS vide S.O. 964 dated 20.04.2017 published in the Gazette of India dated 22.04.2017 stands de-notified.

3. This notification will be effective from the date of its issue.

[F. No. R-11025(15)/13/2020-OR-I /E-34808]

P. SOMAKUMAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 6 अक्तूबर, 2020

का.आ. 926.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित,1987) के नियम 10 के उप-नियम (4) के अनुसरण में, श्रम और रोजगार मंत्रालय के प्रशासकीय नियंत्रणाधीन निम्नलिखित कार्यालयों को, जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्वारा अधिसूचित करती है:

1. कर्मचारी राज्य बीमा निगम - शाखा कार्यालय जसीडीह।
2. कर्मचारी राज्य बीमा निगम - शाखा कार्यालय गिरीडीह।
3. कर्मचारी राज्य बीमा निगम - उप क्षेत्रीय कार्यालय भोपाल।

[सं. ई-11016/1/2017-रा.भा.नी.]

गोपाल प्रसाद, आर्थिक सलाहकार

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 6th October, 2020

S. O. 926.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Languages (Use for official purposes of the Union) Rules, 1976 (as amended, 1987) the Central Government hereby notifies the following offices under the administrative control of the Ministry of Labour & Employment, more than 80% Staff whereof have acquired working knowledge of Hindi:-

1. Employees State Insurance Corporation - Branch office, Jasidih.

2. Employees State Insurance Corporation - Branch office, Giridih.

3. Employees State Insurance Corporation - Sub Regional Office Bhopal.

[No. E-11016/1/2017-RBN]

GOPAL PRASAD, Economic Adviser

नई दिल्ली, 6 अक्तूबर, 2020

का.आ. 927.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित,1987) के नियम 10 के उप-नियम (4) के अनुसरण में, श्रम और रोजगार मंत्रालय के प्रशासकीय नियंत्रणाधीन निम्नलिखित कार्यालयों को, जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्द्वारा अधिसूचित करती है:

1. कर्मचारी भविष्य निधि संगठन - क्षेत्रीय कार्यालय, दिल्ली (पश्चिम)
2. कर्मचारी भविष्य निधि संगठन - क्षेत्रीय कार्यालय, दिल्ली (मध्य)

[सं. ई-11016/1/2017-रा.भा.नी.]

गोपाल प्रसाद, आर्थिक सलाहकार

New Delhi, the 6th October, 2020

S. O. 927.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Languages (Use for official purposes of the Union) Rules, 1976 (as amended, 1987) the Central Government hereby notifies the following offices under the administrative control of the Ministry of Labour & Employment, more than 80% Staff whereof have acquired working knowledge of Hindi:-

1. Employees Provident Fund Organization - Regional Office, Delhi (West)

2. Employees Provident Fund Organization - Regional Office, Delhi (Central)

[No. E-11016/1/2017-RBN]

GOPAL PRASAD, Economic Adviser

नई दिल्ली, 7 अक्तूबर, 2020

का.आ. 928.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार मेसर्स प्रबंध, प्राच्य सुरक्षा सेवा, भुवनेश्वर एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 21/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.09.2020 को प्राप्त हुआ था।

[सं. एल-42025/07/2020-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th October, 2020

S. O. 928.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID No. 21/2018) of the Central Government Industrial-Tribunal-cum Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing, Oriental Security Service, Bhubaneswar, Bhubaneswar Others and their workmen, which was received by the Central Government on 25.09.2020.

[No. L-42025/07/2020-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM LABOUR COURT, BHUBANESWAR

I.D. Case No. 21 of 2018

1. Sh. Pratap Kumar Samantaray, Managing Director Oriental Security Service, BBSR

2. The Director, NISER, Jatni, Khordha

Vrs.

Smt. Pragyan Paramita Sethi

The authorized representative of Management No.1 is present. He files a Memo along with an appointment offer to the applicant. As per the order of appointment the applicant is required to report her duty within three days at East Cost Railway, Mancheswar and she would be paid wages as per the norm of the Railway. But, the applicant was found absent. As it appears from the pleadings advanced by the Management and conduct of its authorized representative that the Management is prepared to give engagement to the applicant in place where suitable job for the applicant is available. The applicant workman is found absent to pursue her dispute. In the above facts and circumstance there is no alternative than dismissing the applicant U/s. 2-A(2) of the I.D. Act for non-prosecution i.e. for default of the applicant workman. The case be notified as required under the Act.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 7 अक्तूबर, 2020

का.आ. 929.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार मेसर्स अधीक्षण पुरातत्वविद्, भारतीय पुरातत्व सर्वेक्षण, समानतारपुर, भुवनेश्वर एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 11/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.09.2020 को प्राप्त हुआ था।

[सं. एल-42025/07/2020-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th October, 2020

S. O. 929.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID No. 11/2018) of the Central Government Industrial-Tribunal-cum Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial dispute between the employers in relation to The Superintending Archaeologist, Archaeological Survey of india Samantarapur, Bhubaneswar Others and their workmen, which was received by the Central Government on 16.09.2020.

[No. L-42025/07/2020-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM LABOUR COURT, BHUBANESWAR

I.D. Case No. 11 of 2018

The Superintending Archaeologist,
Archaeological Survey of India, Samantarapur,
Bhubaneswar. ...1st Party Management

-Versus-

Sri Bipin Bihari Patra,
At/P.O.Kotanga,P.S.-Konark,
District-Puri. ...2nd Party Workman

30.10.2019 This Industrial Dispute Case is registered on the statement of claim filed by Bipin Bihari Patra resorting to the Provisions of Sec.2-A(2) of I.D.Act wherein allegation has been raised that the Service of the applicant workman was terminated without compliance of the provisions of the I.D. Act.

On being noticed the 1st Party Management appeared and filed l its written statement. As no step was taken by the Management subsequently he was set exparte. Thereafter the case is protracting for evidence of the applicant workman. Inspite of several adjournments the workman failed to appear and adduce his evidence. The case cannot be allowed to linger for an indefinite period in this manner . In absence of any information from the workman it is difficult to hold that the dispute is persists between the parties. It is also difficult on the part of the Tribunal to pass any award without evidence of the applicant workman. On the other hand it has been well settled that there is no provision in the Act to pass a Nil Award or No Dispute Award in case the disputant fails to make appearance and prosecute his claim.

Having regard to the above settled principles the case registered on the Statement of Claim of the Workman resorting to the provisions of Sec.2-A(2) is dismissed for default of the applicant and the case is disposed of . Copy of the order be sent to the parties for their information and necessary action.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 7 अक्तूबर, 2020

का.आ. 930.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार मेसर्स पेस्टिका लेबर सर्विस प्राइवेट लिमिटेड, अहमदनगर (एम एस) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद श्रम न्यायालय, अहमदनगर के पंचाट (संदर्भ संख्या 62/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.09.2020को प्राप्त हुआ था।

[सं. एल-42025/07/2020-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th October, 2020

S. O. 930.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID No. 62/2018) of the Labour Court, Ahmednagar as shown in the Annexure, in the Industrial dispute between the employers in relation to The Pestika Labour Service Pvt. Ltd., Ahmednagar (Ms.), Others and their workmen, which was received by the Central Government on 30.09.2020.

[No. L-42025/07/2020-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE FIRST LABOUR COURT, AT–AHMEDNAGAR

(Before Sau. H.S.Bhosale, Judge)

Exh. O-6

REFERENCE (I.D.A.) No. 62/2018

(CNR No. MHLC160004632018)

1. M/s. Pestika Labour Service Pvt. Ltd.
2. The General Manager, BSNL, A. Nagar
3. Sub Divi. Engineer, BSNL, Pathardi ...First Party

VERSUS

Sayyad Mustak Fattubhai
Hanuman Takali,Tal.: Pathardi,
Dist. Ahmednagar. ...Second Party

AWARD

(Delivered on : 27.02.2020)

1. This reference is referred by the Government of India/Bharat Sarkar Ministry of Labour vide referred order dated 25-10-2018 for adjudicating the matter of 2nd party who was illegally terminated from 20-3-2018 and demanded to reinstate in services with full back wages and pay as per permanent employee . This court has issued notices to the second party vide Exh. O-2 & O-4 despite of service of notices to the 2nd party for filing statement of claim the 2nd party did not appear before this court not filed statement of claim. In my opinion the 2nd party is not interested in proceeding with the present reference. Hence, I am inclined to pass the following order:-

AWARD

1. The reference is answered in the negative and disposed of for non prosecution.

2. Appropriate copies of this Award be sent to the concerned authority for publication. In such circumstances there is no order as to costs.

Date : 27.02.2020

HEMALATA BHOSALE, Presiding Officer

नई दिल्ली, 7 अक्तूबर, 2020

का.आ. 931.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार मेसर्स पेस्टिका लेबर सर्विस प्राइवेट लिमिटेड, अहमदनगर (एम एस) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद श्रम न्यायालय, अहमदनगर के पंचाट (संदर्भ संख्या 61/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.09.2020को प्राप्त हुआ था।

[सं. एल-42025/07/2020-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th October, 2020

S. O. 931.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID No. 61/2018) of the Labour Court, Ahmednagar as shown in the Annexure, in the Industrial dispute between the employers in relation to The Pestika Labour Service Pv.t Ltd, Ahmednagar (Ms.), Others and their workmen, which was received by the Central Government on 30.09.2020.

[No. L-42025/07/2020-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE FIRST LABOUR COURT, AT–AHMEDNAGAR

(Before Sau. H.S. Bhosale, Judge)

Exh.O-6

REFERENCE (I.D.A.) No. 61/2018

(CNR No. MHLC160004622018)

1. M/s. Pestika Labour Service Pvt. Ltd.
2. The General Manager, BSNL, A. Nagar
3. Sub Divi. Engineer, BSNL, Pathardi ...First Party

VERSUS

Pacharne Raju Namdeo
R/o. Koregaon, Po. : Mohate,
Tal.: Pathardi, Dist. Ahmednagar ...Second Party

AWARD

(Delivered on : 27.02.2020)

1. This reference is referred by the Government of India/Bharat Sarkar Ministry of Labour vide referred order dated 25-10-2018 for adjudicating the matter of 2nd party who was illegally terminated from 20-3-2018 and demanded to reinstate in services with full back wages and pay as per permanent employee . This court has issued notices to the second party vide Exh. O-2 & O-4 despite of service of notices to the 2nd party for filing statement of claim the 2nd party did not appear before this court not filed statement of claim. In my opinion the 2nd party is not interested in proceeding with the present reference. Hence, I am inclined to pass the following order:-

AWARD

1. The reference is answered in the negative and disposed of for non prosecution.

2. Appropriate copies of this Award be sent to the concerned authority for publication. In such circumstances there is no order as to costs.

Date : 27.02.2020

HEMALATA BHOSALE, Presiding Officer

नई दिल्ली, 7 अक्तूबर, 2020

का.आ. 932.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार मेसर्स एस्टेट प्रबंधक, एस्टेट मैनेजमेंट यूनिट, डी आर डी ओ, चांदीपुर, बालासोर उड़ीसा एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 11/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.02.2020 को प्राप्त हुआ था।

[सं. एल-42025/07/2020-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th October, 2020

S. O. 932.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID No. 11/2016) of the Central Government Industrial-Tribunal-cum Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial dispute between the employers in relation to The Estate Manager, Estate Management Unit, D R D O, Chandipur, Balasore Orissa, Others and their workmen, which was received by the Central Government on 12.02.2020.

[No. L-42025/07/2020-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER, C.G.I.T-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 11 OF 2016

Dated Bhubaneswar, the 21st August, 2019

Present: Shri B.C. Rath, Presiding Officer,
C.G.I.T-cum-Labour Court, Bhubaneswar

Between:

1. The Estate Manager,
Estate Management Unit,
DRDO, Chandipur, Balasore.
2. M/s. D.P.Services,
At/PO. Chandipur, Dist. Balasore
Represented through its Proprietor.
3. M/s. ACP Services.
At/PO. Chandipur, Dist. Balasor
represented through its Proprietor. ...First party management

AND

Shri Bishnu Jena @ Bishnu Chandra Jena
S/o. Late Dhaneswar Jena, At: Sonapur,
PO. Chandipur, Dist. Balasore – 756025. ...Second party workman

Appearances:

Shri P. R. Nayak : For first party management No. 1

Shri K. K. Swain : For first party management No. 2

Rahidul Ali Mollah : For first party management No. 3

Shri Bishnu Jena : Second party workman himself.

ORDER

Second party workman is present and he submits a memo informing that he is not interested to prosecute the case further. None appears on behalf of the managements. Having regard to the memo filed by the workman and his submission, the case is dismissed without deciding the merit of the application preferred by the workman and the case is disposed of accordingly.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 7 अक्तूबर, 2020

का.आ. 933.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सहायक अधीक्षक, डाकघर, कराड, (पुणे) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय,-1 पुणे के पंचाट (संदर्भ संख्या 258/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.03.20 को प्राप्त हुआ था।

[सं. एल-42025/07/2020-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th October, 2020

S. O. 933.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 258/2017) of the Labour Court -1 Pune, as shown in the Annexure, in the Industrial dispute between the employers in relation to the Assistant Superintendent, Post Office, Karad Pune & Others, and their workmen which were received by the Central Government on 11.03.20.

[No. L-42025/07/2020-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER, FIRST LABOUR COURT, PUNE

(Presided Over by : Kalpana N. Phatangare)

Reference (IDA) No. 258/2017

Assistant Superintendent,
Post Office, Karad,
West Sub – Division, Karad,
Tal. & Dist.:- Karad – 415 110. ...First Party

AND

Mr. Bhimrao Dnyandev Kamble
R/o. At/Post :- Garvade,
Via – Bahule,
Tal.:- Patan, Dist.:- Satara. ...Second Party

Appearances :-

Mr. P. S. Sapre : Advocate for the first party

Mrs. S. A. Nagrale : Advocate for the second party

AWARD

(Passed on this 12th December 2019)

1) The present Reference is directly filed by second party under Sub–Section (2) and (3) of Section 2A of The Industrial Disputes (Amendment) Act, 2010 as per certificate (xerox) given by Regional Labour Commissioner (Central), Pune consequent upon his termination from the services w.e.f. 20.05.2014 by the management i.e. ASPOs Karad West Sub Division.

2) Brief facts of the 'Statement of Claim' Exh.:-U-1 are as follows:-

There are more than 100 employees working with first party on different posts. Second party through first party provides services to the public and charge for the said service, therefore, first party is an 'Industry' and all Labour Laws are applicable to it. It is submitted that second party was working with first party as 'G. D. S. Packer' for more than 32 years continuously. He has completed more than 240 days continuous service with first party. Second party has worked honestly and properly. He was paid Rs. 8,512/- per month.

3) It is alleged that while the second party was working as 'G. D. S. Packer' he was posted at Bahule Post Office, his services were came to be terminated on 20.04.2013. It is submitted that it was came to the notice of 'Reviewing Officer' of Inspection Squad that as the date of birth of second party was 01.06.1964 on 01.05.1982 i.e. appointment date he was 17 years 11 months old. It means he has not completed 18 years at the time of his appointment. Therefore, his appointment was irregular. Accordingly Directorate, New Delhi by order dated 19–23/97–ED TRG dated 13.11.2017 decided to terminate his services. He may submit his Written Reply within 30 days from the receipt of said notice. It is submitted that this order is not applicable to the second party as his appointment is dated 01.05.1982.

4) It is submitted that when second party was appointed at that time first party had asked second party whether he is ready to work with it and was allowed to resume. At the time of resuming the duty, second party has submitted his school leaving certificate as proof of his birth. The officers of the first party after verifying the documents allowed second party to resume the duty and has not taken any objection regarding his age. Under such circumstances, the Memo dated 29.04.2013 issued to second party is ex–parte, illegal and making injustice upon the second party.

5) It is alleged that with bad intention of keeping second party away from the promotion and excluding him from getting the benefits of permanent employees, memo dated 29.04.2013 was issued. This act of first

party is nothing but unfair labour practices. Second party was not given opportunity of hearing. At the time of his termination, second party was not given Retrenchment Compensation or legal dues payable to him. He was also not given provident fund or gratuity amount. He was kept away from getting the benefits of permanent employees. Therefore, prayed that it may be declared that second party is employee of first party and he was illegally terminated from service w.e.f. 20.05.2014. He prayed to be reinstated in service on his previous post along with continuity of service and consequential benefits w.e.f. 20.05.2014.

6) The first party appeared in the matter and filed its 'Written Statement' vide Exh.:-C-3. It is submitted that second party was appointed as 'Gramin Dak Sevak Mail Packer' (i.e. GDS PKR) and GDS is extra departmental Agents and not departmental employee and shall be outside the Civil Service of the Union. Therefore, The Industrial Disputes Act is not applicable. It is submitted that ASPOs Karad West Sub Division Karad is a recruiting authority of GDSPKR, GDSMD and GDSMC (i.e. other that GDSBPM) for jurisdiction of Karad West Sub Division, the ASPOs post comes under Ministry of Communication, Department of Post's, which is not doing business only serve the member of public on behalf of Government of India.

7) It is submitted that Mr. Bhimrao Dnyandev Kamble, Ex – GDSPKR Bahule SO, date of birth 01.06.1964 had selected as GDSKPR Bahule SO w.e.f. 01.05.1982. While having age 17 years and 11 months i.e. below 18 years of age, which is irregular appointment, bad in law and contravention of Rules. Second party was appointed as GDSPKR with clear intimation that his engagement as GDSPKR shall be in the nature of contract liable to be terminated by him or recruiting authority. Also he was not entitled for salary, as he is entitled for payment of Time Related Continuity Allowance (TRCA) and other allowances as may be prescribed by Government on the basis of workload. It is submitted that while having age 17 years 11 months i.e. below 18 years of age, which is irregular appointment as per Directorate Order No.:- 19-23/97-ED TRG dated 13.11.2017.

8) It is submitted that at the time of appointment, second party has not completed 18 years of age. Therefore, his appointment was in contravention of rules. Therefore, Poss Satara Division Satara directed to ASPOs Karad West Sub Division Karad to take immediate action to terminate the irregular appointments of GDS immediately by observing proper procedure of issuing one months notice and as per guidelines on the subject. Hence, ASPOs Karad West Sub Division Karad issued show cause notice to second party vide his letter No.:-A.S.P./Karad West/Appointment/GDSPKR/2013 dated 29.04.2013 and thereby asked him to submit his written say within 30 days from the date of receipt of this notice.

9) It is submitted that second party had worked as GDSMD Sonaichiwadi BO, Bahule SO w.e.f. 16.06.1980 to 16.02.1981 (on temporary basis) and his services came to be terminated from there due to below / under age and the said fact is clearly mentioned by him in his application dated 02.04.1982 for the post of GDSPKR Bahule So. This indicated that second party was below / under age before applying post of GDSPKR. Second party was well aware before he had applied for the post GDSPKR.

10) It is submitted that second party was not selected for the post of MTS on selection cum seniority basis. Also he was not a departmental employee of the Department. While checking the cases for selection of GDS to MTS cadre for seniority cum fitness quota for the year 2013, first party noticed that second party was appointed under age. It is submitted that action taken against the applicant is as per rule. ASPOs Karad West Sub Dn Karad considering all the points mentioned in the representations dated 28.05.2013 to the Show Cause Notice dated 29.04.2013 and decided that the appointment of second party was irregular and action taken by ASPOs Karad West is correct one.

11) It is submitted that second party and all GDS were not entitled to salary, they were entitled to TRCA depends on workload also not entitled for any type of retirement benefit and pension benefit. Reference is without merits, hence, the same may kindly be dismissed the Reference with cost.

12) On the basis of rival contentions, issues are framed vide Exh.:-O-1. Those issues along with their findings and reasons therefor are as follows :-

	ISSUES	**FINDINGS**
1)	Whether the second party proves that First party illegally terminated his services w.e.f. 20.05.2014, without following due process of law ?	.... Yes.
2)	Whether the first party proves that second party was under age i.e. less than 18 years and therefore, his appointment was irregular as per Rules applicable to the first party ?	.... No.

3)	Whether the second party proves that he is entitled to the reliefs, as claimed ?	.... Yes.
4)	What Order ?	Reference is answered in affirmative.

REASONS

13) Second party examined him vide Exh.:–U–7. He closed his oral evidence as per Pursis Exh.:-U-9. First Party filed documentary evidence and closed its oral evidence vide pursis Exh.:-C-8. Heard arguments advanced by both the parties. Perused the record.

AS TO ISSUE Nos. 1 TO 4 :-

14) These issues are interlinked with each other. Therefore, those are taken for discussion simultaneously. On behalf of first party it is argued that second party was working with first party. His services were came to be terminated as at the time of appointment he was 17 years and 11 months old i.e. has not completed 18 years. As per letter Exh.:-C-7 second party has admitted that at the time of appointment his age was 17 years 11 months. During cross he has admitted that he submitted a letter in which he submitted that he was given employment though he was not completing 18 years therefore, he may be taken back in service. This shows that second party was aware that he has not completed his age of 18 years at the time of his appointment. At the time of joining the service, he was no ful–filling the criterion. Hence, his reference be rejected.

15) On the other hand, Ld. Advocate Mrs. Sangita Nagrale for second party has argued that second party was appointed in the year 01.05.1982 with first party as G.D.S. Packer. On 13.11.2017 on G. R. on which basis he was given he was show cause notice that his appointment was irregular as he has not completed 18 years of age and when he was appointed he was 17 years and 11 months old. It is argued that second party has told original birth date. But even then he was appointed and he was not rejected. He has served for 32 years. His services were terminated as per G. R. which was of the year 1997. Second party was appointed in the year 1982. Then how he can be terminated on the basis of year 1997 whereas he was appointed in the year 1982. Then how the back effect can be given of the G. R. of the year 1997. Further second party has served for more than 32 years. Whether his 32 years service which was given by first party itself can be said as illegal. Hence, his Reference be allowed.

16) In view of aforesaid discussions, it can be seen that there is G. R. of the year 1997 on the basis of which services of second party were terminated. Whereas second party was appointed in the year 1982. No objection was taken at the time of his appointment. Second party has submitted his school leaving certificate at the time of his appointment. This shows that second party has not deceived anybody. The back effect of the G. R. and the appointment which was given by first party itself shows irregularity in termination. Further the long spam of service of 32 years cannot be washed out for no misconduct. Hence, the dismissal is shockingly disproportionate. It needs to be set aside. Accordingly, Issue No. 1 is answered in the affirmative, hence, the termination dated 30.07.2013 is illegal.

17) Second party has submitted his school leaving certificate and first party even thereafter has allowed him to resume the duties. Therefore, in view of this position though he was under age at the time of appointment, he has not deceived anybody to secure employment nor the first party objected for the same. Therefore, issue no. 2 is answered in the negative. In view of answers to issue Nos. 1 and 2, second party is entitled to get reinstatement on his previous post with continuity of service, full back wages from date of termination till the date of actual reinstatement along with consequential benefits. Hence, issue No. 3 is answered in the affirmative. In answer to issue No. 4 following order is passed :

ORDER

1) The Reference is answered in the affirmative.

2) The dismissal order dated 20.05.2014 is illegal, hence, quashed and set aside.

3) First party is hereby directed to reinstate second party on his previous post with continuity of service and full back wages from the date of termination till actual reinstatement along with consequential benefits.

4) Parties to bear their own costs.

DATE : 12.12.2019

KALPANA N. PHATANGARE, Presiding Officer

नई दिल्ली, 7 अक्तूबर, 2020

का.आ. 934.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार मेसर्स टाइम्स सिक्योरिटी सर्विसेज प्राइवेट लिमिटेड भुवनेश्वर उड़ीसा एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 45/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.01.2020 को प्राप्त हुआ था।

[सं. एल-42025/07/2020-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th October, 2020

S. O. 934.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID No. 45/2018) of the Central Government Industrial-Tribunal-cum Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial dispute between the employers in relation to The Times Security Services Pvt. Ltd. Bhubaneswar Orissa, Others and their workmen, which was received by the Central Government on 14.01.2020.

[No. L-42025/07/2020-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER, C.G.I.T-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 45 OF 2018

Dated Bhubaneswar, the 19th August, 2019

Present: Shri B.C. Rath, Presiding Officer,
C.G.I.T-cum-Labour Court, Bhubaneswar

Between:

Times Security Services Pvt. Ltd.
Represented through it's Manager (Ops),
Plot No. N-5/496, IRC Village, Nayapalli,
Bhubaneswar – 751015,
Dist.: Khordha (Odisha). ...First party managemet

AND

Shri Ratnakar Behera
S/o. Sarat Chandra Behera,
Village – Miteipur, P.O: Bantu,
P.S: Nimapara, District : Puri. 752106. ...Second party workman

Appearances:

NONE : For both parties

ORDER

None appears from either sides on repeated calls. It is seen that the second party workman is not taking any steps after filing his sworn affidavit evidence. In absence of any documents towards his appointment and his continuous working for more than 240 days in a calendar year, it is difficult on the part of the Tribunal to give any award. That apart, neither his claim statement nor his sworn affidavit disclose the date of engagement in the first party establishment and if the workman was working continuously for more than 240 days in a calendar year. Be that as it may, I find it just and proper to dismiss the claim statement for default of the second party workman.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 7 अक्तूबर, 2020

का.आ. 935.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार मेसर्स वरिष्ठ डाक अधीक्षक, जयपोर , उड़ीसा एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 01/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.09.2020 को प्राप्त हुआ था।

[सं. एल-42025/07/2020-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th October, 2020

S. O. 935.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID No. 01/2018) of the Central Government Industrial-Tribunal-cum Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial dispute between the employers in relation to The Sr. Superintendent of Post Offices, Jeypore (Orissa), Others and their workmen, which was received by the Central Government on 24.09.2020.

[No. L-42025/07/2020-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT OF INDUSTRIAL TRINUNAL-CUM-LABOUR COURT BHUBANESWAR

Present: Shri B.C. Rath, Presiding Officer, C.G.I.T-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 01/2018

Date of passing Award – 17th September, 2020

Between:

Department of Posts. Govt. of India
Represented through
Sr. Superintendent of Post Offices,
Koraput Division,
Jeypore(K)-& Others
PIN: 764001 ...Ist Party Management

(AND)

1. Sri Samir Kumar Samantray,
S/o. Sri Jagadananda Samantray,
At: New Street, 5th Lane, Near Trimurty Club,
PO: Jeypore, Dist: Koraput ...2nd Party workman

Appearance:

1. Sri Surendranath Panda,
Sr. Supdt of Post Offices,
Koraput Division,
Jeypore(K) ...For the Ist party management
2. Sri Samir Kumar Samantray ...For the 2nd Party workman

AWARD

The applicant has approached the tribunal resorting to the provisions of Section 2(A) Sub-Section (2) and (3) of the Industrial Disputes Act,1947 (hereinafter referred to as "Act") since he has alleged to have been retrenched without compliance of the provisions of the Industrial Disputes Act,1947.

The case of the applicant, in short, is that he was working as a data entry operator along some others in the office of Head Post Office, Koraput being engaged by the Head Post Master. His appointment was on daily wage basis at the rate of Rs. 250/- per day with minimum data entries of 300 transactions and at the rate of Rs. 0.50 paise for each transaction entry exceeding 300. He worked in such capacity of data entry operator from the month of April,2013 till the end of the month of May, 2016. It is his claim that he was not paid wages from December, 2014 onwards. Though, he worked for more than 240 days in a calendar year continuously and un-interruptedly, he was disengaged w.e.f. June, 2016 without compliance of the provisions of Section 25 F of the Act. Hence, prayer is made for reengagement and payment of arrear wages.

On being noticed the Superintendent of Post Office, Koraput Division, Koraput has contested the claim taking stand that the applicant was not issued with any appointment letter. On his own approach he was given the work of data entry under the scheme of MGNREGA. The said scheme does not provide any guaranteed employment for continuous and uninterrupted period. Since the fund allotted under the scheme was spent /exhausted and no information/ allotment was received, the applicant and others were disengaged. The applicant being a beneficiary under the scheme is not an employee or workman and as such he has no relief under the Industrial Disputes Act. On the pleadings of the parties, the issues involved in the dispute are as follows:

1. Whether the application preferred by the applicant workman is maintainable under the provisions of Section 2 (A) of Sub-Section (2) & (3) of the Act.

2. If the disengagement of the applicant w.e.f. May, 2016 was illegal and unjustified.

3. If not, to what relief the applicant is entitled to.

The applicant has examined himself only in the case and filed Xerox copies of his complaints to different authorities which is marked as Exhbit.1. On the other hand the management has examined the witness to refute the claim of the workman.

FINDINGS

For the sake of convenience on the issues are taken into consideration simultaneously.

As it appears from the pleadings of the parties that there is no serious dispute to the effect that the applicant was engaged by the 1st party management for work of data entries under the scheme of MGNREGA. The management has not also disputed the claim of the applicant that he worked as data entry operator from April, 2013 to May, 2016. It is also admitted fact that the applicant was receiving his wage from the management at the rate of Rs.250/- per day with minimum entries of 300 numbers and Rs. 0.50 paise more for each entry exceeding to 300 entries. No serious dispute is also raised in regard to continuous and uninterrupted engagement of the applicant for a period of 240 days in a calendar year raising alleged disengagement.

The only contention on the part of the management is that the applicant was not given any appointment and he was engaged under the scheme of MGNREGA. The scheme/project having been completed further non-engagement cannot be amounted to retrenchment. No notice pay or retrenchment compensation is mandatory compliance while refusing work under the scheme. The applicant being a daily wager and aware of the fact that his engagement depended on the funds allotted to the scheme, as no notice or notice pay in lieu of notice is required when he was not given further engagement. But, it cannot be over sighted that his engagement under the scheme was continuous for more than 240 days in a calendar year preceding to his alleged disengagement. There is no credible evidence for the management to establish that the applicant was aware or informed that he was given engagement under the scheme and he would be disengaged when the scheme would be closed or allotment of fund would be stopped or his engagement was subject to availability of the fund. Therefore, refusal of employment to him due to non-availability or non-allotment of fund could not be covered U/s. 2(oo)(bb) of the Industrial Disputes Act,1947. On the other hand it is settled by the Hon'ble Apex Court in the case between SM Nalajkar and others Vs. TELECOM District Manager, Karnataka in civil appeal No. 1239-1244 of 2001 that the engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or up to the occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. But, in the case at hand there is no evidence except oral evidence of M.W.1 that fund being exhausted under the MGNREGA scheme, there was no scope for engagement of the workman and there is no material to show that the workman was aware of the term of his engagement. Hence, he was entitled to notice pay or compensation in accordance with the provisions of Section 25 F, when he was disengaged even though, it is the right of the employer to close the work/undertaking for any reason.

Coming to the case at hand, the applicant workman was not given any notice before refusal of his employment. He was not paid any rehabilitation compensation as required U/s. 25 F of the Industrial Disputes Act. He was not informed or apprised that he was given engagement under a scheme or project or subject to availability of the fund for the same project. Thus, taking totality of facts and circumstances into consideration it can be held that the workman was retrenched without compliance of the provisions of Section 25 F of the Industrial Disputes Act. Hence, his disengagement or refusal of employment amount to retrenchment. Since his employment was not permanent one and he worked for 2 to 3 years only in daily wage basis, the compensation of Rs. 20000/-(twenty thousand) to the applicant would meet the end of justice in the case.

The amount shall be paid within 3 months from the date of its award failing which the applicant is entitled to interest @6.5% per anam on the said amount from date of this award.

Send a copy of the award along with original to the Ministry for its notification and necessary action at their end.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 7 अक्तूबर, 2020

का.आ. 936.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार मेसर्स जगन्नाथ सिक्योरिटी सर्विस, भुवनेश्वर (उड़ीसा) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 02/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.09.2020 को प्राप्त हुआ था।

[सं. एल-42012/195/2015-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th October, 2020

S. O. 936.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID No. 02/2016) of the Central Government Industrial-Tribunal-cum Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial dispute between the employers in relation to The Jagannath Security Service, Bhubaneswar, (Odisha), Others and their workmen, which was received by the Central Government on 16.09.2020.

[No. L-42012/195/2015-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM LABOUR COURT, BHUBANESWAR

I.D. Case No. 2 of 2016

1. M/s. Jagannath Security Service,
   36/C-I, Chakeisihani , P.O. Rasulgarh,
   Bhubaneswar (Orissa)751010.

2. M/s. Anil Security, Bhubaneswar
   1/289, Baramunda Housing Board Colony,
   Baramunda, Bhubaneswar (Orissa)751003.

3. The Branch Incharge, Central Avian Research
   Institute, Bharatpur, Khnadagiri, Bhubaneswar,
   (Orissa) -751009. 1st t Party Managements

-Versus-

The Vice President, Contract & Construction
Labour Union, 32 Ashok Nagar, Bhubaneswar,
(Orissa)-751009. ...2nd Party Union

23) 7.8.2019 Authorised Representatives of the Management Nos.1 and 3 are present. The 2nd Party Union as well as the disputant workman is found absent on repeated calls. On perusal of the records it reveals that the Management No.2 is already set exparte before the settlement of issues as he failed to make his appearance and file his written statement. The case is posted today for evidence of the 2nd Party workman. She is found absent today so also on the previous date of hearing i.e. 11.3.2019. It is submitted by the Authorised Representatives of the Management Nos.1 and 3 that the workman did not attend the Tribunal on earlier occasions also and in view of default of the workman the reference case should be dismissed.

It is seen from the record that the 2nd Party Workman is not taking any steps to adduce her evidence for last two adjournments. The dispute under reference is raised by the workman cannot be adjudicated in absence of evidence on the part of the 2nd Party. It is also difficult to hold if any dispute is presently lingering between the parties. In absence of evidence of the 2nd Party workman neither the dispute can be adjudicated nor any award can be passed as defined U/s.2 sub clause-b of the Act. There is also no provisions in the Act to pass a no dispute or nil award in case the disputant fails to make his appearance and to prosecute his claim. It has been settled by the Hon'ble High Court of Odisha in the case between M/s. IDL Chemical Ltd., -Versus- Presiding Officer, Labour Court, Sambalpur reported in 72(1991) CLT 73 and in the decision of the Hon'ble High Court in the case between B.R.Bermen and Mohatta (India) Private Ltd., –Versus- 7th Industrial Tribunal, West Bengal and others (Short Noted in 1977 Lab. I.C.(NOC)13(CAL) that so long the dispute remains unsettled and the proceeding came to an end without adjudication of the dispute between the parties, there is no bar under the Act whereby the Government is precluded from referring the dispute over again so that there may be an industrial adjudication as contemplated by the Act.

Having regard to the above facts and circumstances as well as the settled principles I am constrained to dismiss the case registered on the reference of the Government of India, Ministry of Labour and Employment vide its Order No.L-42012/195/2015-IR(DU) dated. 15.12.2015 in exercising its authority U/s.10 of the Industrial Act,1947(14 of 1947) without adjudication of the dispute. Accordingly the reference case is disposed of without any award. A copy of the award be sent to the Govt. of India, Ministry of Labour and Employment for necessary action at their end.

Dictated & corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 7 अक्तूबर, 2020

का.आ. 937.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार मेसर्स सुनील कुमार पालो सुरक्षा एजेंसी, भुवनेश्वर, (ओडिशा) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर को पंचाट (संदर्भ संख्या 85/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.01.2020 को प्राप्त हुआ था।

[सं. एल-42025/07/2020-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th October, 2020

S. O. 937.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID No. 85/2018) of the Central Government Industrial-Tribunal-cum Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial dispute between the employers in relation to The Sunil Kumar Palo Security Agency, Bhubaneswar, (Odisha), Others and their workmen, which was received by the Central Government on 14.01.2020.

[No. L-42025/07/2020-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER, C.G.I.T-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 85 OF 2018

Dated Bhubaneswar, the 2nd July, 2019

Present:

Shri B.C. Rath
Presiding Officer,
C.G.I.T-cum-Labour Court,
Bhubaneswar.

Between:

1. Mr. Sunil Kumar Palo, Proprietor,
Sunil Kumar Palo Security Agency
(P.K. Security Agency)
Plot No.190, Room No. 2, Prachi
Enclave, Chandrasekharpur,
Bhubaneswar – 751016,
District – Khurda. (Odisha).

2. The Director, All India Radio, Cuttack
Office of A.I.R., Cuttack,
03 Cantonment Road,
Cuttack – 753001 (Odisha). ...First party management

AND

Mr. Keshab Kumar Nayak
(Ex-Serviceman Army)
C/o. Shantisantosad Nayak,
At/P.O: Erada, Via: Sabarang,
Dist.: Bhadrak – 756123 (Odisha). ...Second party workman

Appearances:

Col S.K. Palo. : For first party management

Mr. K.K. Nayak : Second party workman himself

Applicant workman is present so also the authorized representative of the management. Case is posted today for filing of rejoinder by the workman and for hearing on settlement of issues. Heard parties on settlement of issues.

Perused the statement of claim and written statement. On perusal of statement of claim, it reveals that the case is registered on receipt of the application from the workman under Section 2-A sub-section 2 of Industrial Disputes (Amendment) Act, 2010. As per this provision an individual workman can file an application directly before the Industrial Tribunal for a dispute relating to his dismissal/ termination/ retrenchment/ disengagement. The statement of claim reveals that prayer has been made for directing the management No.1 to pay Rs.5,00,000/- to the workman for loss of his prestige, dignity, character and harassment and for payment of Rs.90,000/- towards retrenchment and Rs.40,000/- towards reimbursement of the expenditure made by the applicant workman in filing the case. Such prayer of claim is not maintainable under the provisions of Section 2-A of the Industrial Disputes Act. Hence, the statement of claim/application filed by the workman being devoid of merit is stands rejected.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 7 अक्तूबर, 2020

का.आ. 938.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार मेसर्स निर्देशक, राष्ट्रीय चावल अनुसंधान संस्थान, कटक, ओडिशा एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 42/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.01.2020 को प्राप्त हुआ था।

[सं. एल-42011/13/2017-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th October, 2020

S. O. 938.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID No. 42/2017) of the Central Government Industrial-Tribunal-cum Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, National Rice Research Institute, Cuttack, Odisha, Others and their workmen, which was received by the Central Government on 14.01.2020.

[No. L-42011/13/2017-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE COURT OF THE PRSIDING OFFICER, C.G.I.T-CUM-LABOUR COURT, BHUBANESWAR

I.D.CASE NO. 42 OF 2017

Dated Bhubaneswar, the 13th August, 2019

Present: Shri B.C. Rath, Presiding Officer,
C.G.I.T-cum-Labour Court, Bhubaneswar

Between:

1. The Director,
National Rice Research Institute, Bidyadharpur,
Cuttack, Odisha.

2. The Director General,
Indian Council of Agricultural Research,
Krishi Anusandhan Bhawan-II, Pusa,
New Delhi – 110012.

3. M/s. Anil Security Service Contractor,
C/o. National Rice Research Institute,
Bidyadharpur, Cuttack, Odisha. 753004.

4. Sh. Tripura Behera,
Contractor, C/o. National Rice Research Institute,
Bidyadharpur, Cuttack, Odisha. 753004. ...First party managements

AND

The General Secretary, CRRI Shramik Sangha,
C/o. National Rice Research Institute,
Bidyadharpur, Cuttack, Odisha. 753004. ...Second party Union

Appearances:

NONE : For first party managements

Shri Arjuna Ch. Das : For second party Union

AWARD

The Government of India, Ministry of Labour have referred the industrial dispute vide its Order No. L-42011/13/2017 (IR(DU)) dated 5.6.2017 for its adjudication in exercise of power under clause (d) of sub-

section (1) and sub-section 2-a Of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (herein after referred to as 'the Act') and the schedule of reference is as follows:

"Whether the demand of the union (CRRI Shramik Sangha) for equal pay to equal work in respect of their member workmen Sri K.K. Sethy & 42 others (list as annexed) who are working under various contractors at NRRI, Cuttack with 1/30 basic wages of regular Group-C workman along with D.A. & HRA as applicable at par with contract labour of CIFA & other institutions of ICAR in similar category is legal and/or justified ?If not, what relief the workmen are entitled to ?"

2. Authorised representative of the Union is present. The case is lingering at the stage of filing of statement of claim. Authorised representative of the Union files a memo and submits for withdrawal of reference on a contention that in view of the reference No. L-42011/152/2018 (IR(DU)) dated 19.11.2018 the dispute arised in the present reference needs no adjudication. According to him the reference in I.D. Case No.78/2018 is a modification of the present reference. Having regard to the submission it is felt just and proper to with draw the reference without adjudication as the second party union is not interested to prosecute the matter. Accordingly, the reference is disposed of. Copy of the order be sent to the Ministry for information and necessary action at their end.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 7 अक्तूबर, 2020

का.आ. 939.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अध्यक्ष, नेशनल जूट मैन्युफैक्चरर्स कॉर्पोरेशन लिमिटेड, कोलकाता और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकात के पंचाट (संदर्भ संख्या 01/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.09.20 को प्राप्त हुए थे।

[सं. एल-42011/32/2011-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th October, 2020

S. O. 939.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 01/2011) of the Central Government Industrial-Tribunal-cum Labour Court Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chaiman, National juet Manufacturers Corporation Limited, Kolkata & Others, and their workmen which were received by the Central Government on 30.09.20.

[No. L-42011/32/2011-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 01 of 2011

Parties:

Employers in relation to the Management of M/s. National Jute Manufacturers Corporation Ltd, Represented by The Chairman Cum Managing Director having its Registered Office at 4, N.S.Road, Kolkata-700 01

AND

Their Workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance :

For Management : Sri D. Barman, Advocate

On Behalf of Workmen : Mrs. A. Bannerjee, Advocate

State: West Bengal Industry: Textile

Dated: 16, September 2020

AWARD

1. Brief Facts are that the Workmen Sri Sadhan Chakraborty, Sri Kundal Mohan Goswami, Sri Rabindra Nath Biswas, Sri Sujoy Banerjee, Sri Mrinal Kanti Mukherjee, Sri Tapan Kumar Mukherjee, Sri Suresh Chandra Ghosh, had joined at Khardah Unit of M/S National Jute Manufacturers Corporation Ltd on 02.05.1978, August 1985, 27.09.1980, 15.11.1980, 01.05.1986, 02.05.1986 and March 1983 respectively and worked in the Company continuously and efficiently without any allegation. However they except Suresh Chandra Ghosh were retrenched by the company w.e.f 18.01.2010 which gave rise to industrial dispute. Consequent upon failure of conciliation proceedings the matter has been referred by the Government of India, Ministry of Labour & Employment vide order No-L-42011/32/2011-IR (DU) dated 04.04.2011 in exercise of its powers conferred under section 10 (1) (d) and (2A) of the industrial disputes Act 1947 in following terms:

> *''Whether the action of the managent of National Jute Manufacturing Corporation, Khardah Unit having registered office at Chartered Bank Building, 2nd floor, 4 N.S.Road, Kolkata-700001, in retrenching 6 workers namely S/Shri Sadhan Chakraborty, Kundal Mohan Goswami, Rabindra Nath Biswas, Sujoy Banerjee, Mrinal Kanti Mukherjee and Tapan Kumar Mukherjee, w.e.f 18.01.2010 is legal and justified ? What relief the workmen are entitled to ?."*

2. After receipt of above reference, notices were sent to the parties whereupon the workmen filed their statement of claim stating that the company illegally retrenched them from w.e.f 18.01.2010 without complying with the requirements provided under section 25F of the Industrial Disputes Act (here-in-after called "The Act" for brevity) as they did not apply for Voluntary Retirement Scheme offered by the Company. The company also did not pay to them arrears of salary as per Award no-NT--01 of 1993 by National Tribunal, Kolkata and Agreement dated-19/20.06.2003 despite direction issued by the Hon'ble High Court Calcutta in W.P.No-8547 (W) of 2009. It is further stated that the company arbitrarily neither gave any valid notice giving lawful reason for retrenchment nor salary in lieu thereof. Thus the workmen have claimed that their retrenchment is illegal and unjustified and that they should be reinstated with full back wages.

3. In Written Statement filed by the management of Company it has been pleaded that he company had incurred heavy losses, therefore the company was referred to BIFR on 11th August 1992. After failure of all attempts to improve performance of mills, BIFR recommended winding up of NJMC in terms of provisions of Sick Industrial Companies (Special Provisions) Act 1985 and referred the case to Calcutta High Court for further action. The revival scheme of two mills i.e Kinnison and Khardah was submitted to the Court conveying Government's intention to revive. It is also stated that the Khardah Mill of the company had been in total nonfunctioning state since 2005 and all clerical staff and sub-staff had become surplus. The management, therefore, floated a VRS for the clerical staff and sub-staff whch remained in force till 30th April 2009. The management could not bear the burden of paying idle salary to any clerical staff and sub-staff of Khardah Mill, therefore the Khardah Mill was left with no option but to retrench the surplus staff and sub-staff of the Mill. The workmen under reference were clerical staff and sub-staff of the Khardah Mills who had been retrenched by the management vide retrenchment notice dated 15th January, 2010 with effect from 18th January, 2010. The retrenchment was effected on justifiable grounds and on payment of one month's pay in lieu of notice, retrenchment compensation, 10% additional amount to be adjusted against shortfall in payment of retrenchment compensation and also unpaid wages till 16th January, 2010. The provisions of section 25F of the Act had been duly complied with by the management at the time of effecting the retrenchment of the workmen concerned. Permission from the appropriate Government was not required before effecting the retrenchment of the workmen concerned as the industrial establishment did not employ 100 workmen on an average per working day for the preceding 12 months of the retrenchment in question. It is wrong to say that lawful reason for retrenchment was not given by the company. The retrenchment notices were sent at the recorded address of the workmen concerned and the amount mentioned in each of the notices was sent through demand draft. The reference is, therefore, not maintainable.

4. The workmen also filed their rejoinder reiterating their case as mentioned in their statement of claim.

5. Sri Kundal Mohan Goswami has been examined on behalf of the workmen but he could not be cross-examined due to absence of the management. Certain documentary evidences have been filed by both the parties which shall be dealt with at appropriate stage.

6. I have heard the learned counsels for both the parties. It has been submitted by the learned counsel for the workmen that the retrenchment of the workmen under reference is illegal and not justified in as much as the provisions of section 25F of the Act were not complied with by the company. No lawful reason for retrenchment of the workmen was given by the company. The company also did not serve any retrenchment notice in the prescribed manner to the labour department of the appropriate Government. The company's case is that the provisions of section 25F of the Act had been duly complied with by the management at the time of effecting

the retrenchment of the workmen. The retrenchment was effected on justifiable grounds and on payment of one month's pay in lieu of notice, retrenchment compensation, 10% additional amount to be adjusted against shortfall in payment of retrenchment compensation and also unpaid wages till 16th January, 2010.

7. The question which emerges for consideration is whether the management complied with the provisions of section 25F of the Act before retrenching the workmen under reference. For better appreciation of the point in controversy, It is apposite to reproduce the provisions of Section 25F of the Act which are as below:

25F. Conditions precedent to retrenchment of workmen.-

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay[2] for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government[3] or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

8. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. Admittedly the workmen in present case were in continuous service of the Corporation. Hence it was imperative for the employer to comply with above conditions as enumerated in section 25F of the Act to make retrenchment effective. The first condition for effecting a valid retrenchment is that the workman sought to be retrenched, must be given one month's notice before retrenchment is to become effective in case the services are required to be terminated immediately or to give salary in lieu of one month notice if retrenchment is to be effected before the expiry of one month. The second and equally important condition is that at the time of retrenchment, the workman must be paid retrenchment compensation computed at the rate of 15 days wages for each completed year of service.

9. Where the workmen under reference were in continuous service of the Corporation, burden lies on the employer Corporation that above conditions were complied with before retrenchment of the workmen. The Corporation claims that the workmen were given one month salary in lieu of notice and also retrenchment compensation computed at the rate of 15 days wages for each completed year of service. Though the Corporation has filed copy of notices dated 15.01.2010 stating therein the reason for retrenchment and also the fact that demand draft of salary in lieu of notice and retrenchment compensation were sent through speed post as the workmen had refused to accept the same at 10.45 A.M on 16.01.2010, but It is material to note that no oral evidence has been adduced by the Corporation to prove the notices and refusal by the workmen. Sri Sadhan Chakraborty is said to have received the notice and demand draft of one month's notice pay and compensation but no documentary or oral evidence has been file to prove it. Burden lies on the Corporation to prove that the notice pay and compensation were tendered to the workmen on or before 18.01.2010, the date of retrenchment. In notices filed on record the date of demand draft is mentioned but no date of speed post is given. Thus it is not proved that the notices along with demand drafts were sent to them before their retrenchment. The minimum which the Corporation ought to have done was to produce the receipt of speed post and AD with which demand drafts were sent at the address of workmen to show that the offer of compensation was made to the workmen on 18.01.2010. However, the fact of the matter is that no such document was produced. Therefore, I am convinced with the non- compliance of clauses (a) and (b) of Section 25-F of the Act.

10. Apart from above the employer is also required to comply with Clause (c) of section 25F of the Act. Under clause (c) notice in the prescribed manner is required to be served on the appropriate Government or such authority as may be specified by the appropriate Government. But in present case admittedly notice on the appropriate Government was never served. Compliance of condition under clause (c) of section-25F of the Act is not condition precedent but a condition subsequent and mandatory as held by the Hon'ble Apex Court in **Raj Kumar Vs Director of Education & Ors.** AIR 2016 SC 1855. Relevant portion may be reproduced as under--

''Thus, this Court read the ID Act and the relevant Rules there under together and arrived at the conclusion that Section 25F(c) is not a condition precedent for retrenchment. By no stretch of imagination can this decision be said to have held that there is no need for industries to comply with this condition at all. At the most, it can be held that Section 25F(c) is a ***condition subsequent****, but is still a* ***mandatory condition*** *required to be fulfilled by the employers before the order of retrenchment of the workman is passed."*

11. Thus non-compliance of clause (c) of section 25F of the Act is obvious which renders retrenchment of the workmen illegal and unsustainable. Next question follows whether after the retrenchment has become illegal, re-instatement of the workmen with full back wages is automatic? It is noteworthy that the workmen neither in their statement of claim nor in their evidence have mentioned that they were not gainfully employed during the period after their retrenchment. The question of automatic reinstatement with back wages has been considered by the Hon'ble Apex Court in **Jagbir Singh Vs Haryana State Agriculture Board & Another**, 2009 IV-L.L.J 336 that the re-instatement is not automatic.--

7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back *wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.*

12. In the case in hand the workmen under reference had joined the services of the Corporation thirty five to forty years back ranging from 1978 to1986. Thus the workmen must have reached the age of superannuation or must be on the verge of superannuation. In both the cases, their re-instatement is not proper. Therefore, I come to the conclusion that instead of granting them relief of reinstatement with back wages, it would be more appropriate to grant them lump sum compensation.

13. In these circumstances the retrenchment orders dated 15.01.2010 terminating services of the workmen under reference is set side. However, instead of reinstatement the workmen are entitled to get lump sum compensation of Rs. 4,00,000/- (Four lac) each.

14. The reference is answered accordingly and Award is passed.

Dated: Kolkata

The 23rd September, 2020

Justice RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 7 अक्तूबर, 2020

का.आ. 940.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अध्यक्ष, प्रबंध निर्देशक, पुनर्वास उद्योग निगम लिमिटेड, कोलकाता और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 30/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.09.20 को प्राप्त हुए थे ।

[सं. एल-42012/59/2006-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th October, 2020

S. O. 940.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 30/2006) of the Central Government Industrial-Tribunal-cum Labour Court Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing Director, Rehabilitation Industries Corporation Limited, Kolkata Kolkata & Others, and their workmen which were received by the Central Government on 30.09.20.

[No. L-42012/59/2006-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 30 of 2006

Parties:

Employers in relation to the Management of Rehabilitation Industries Corporation Ltd, Represented by The Chairman Cum Managing Director having its Registered Office at 25, Mirza Galib Street, Kolkata-700 016.

AND

Their Workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance :

For Management : Sri D. Barman, Advocate

On Behalf of Workmen : Mr. S.S. Roy, Advocate

: Sri S. K. Karmakar Advocate

State: West Bengal Industry:

Dated: 23rd September, 2020

AWARD

1. Bereft of unnecessary details the workman Sri Paresh Chandra Rey Was working in The Rehabilitation Industries Corporation Ltd since 1976 in its Leather Unit factory at Boonhooghly on temporary basis and he continued in the service till 13th October 1980 when his services were terminated by the management of the company. The issue of termination of his services was taken up by the Union resulting in an industrial dispute. Consequent upon failure of conciliation proceedings the matter has been referred by the Government of India, Ministry of Labour & Employment vide order No-L-42012/59/2006-IR (DU) dated 08.11.2006 in exercise of its powers conferred under section 10 (1) (d) and (2A) of the industrial disputes Act 1947 in following terms:

> *''Whether the action of the managent of Rehabilitation Industries Corporation Ltd, National Jute Manufacturing Corporation Ltd, in terminating the services of Sri Paresh Chandra w.e.f 13.10.1980 is legal and justified ? If not, to what relief the workmen is entitled to ?."*

2. After receipt of above reference, notices were sent to the parties whereupon the workmen filed his statement of claim stating that the company illegally terminating his services without following the provisions of Section 25F of Act. It is further pleaded that as per standing practice of employment the workman who has completed 240 days would acquire the right to be absorbed as permanent workman in the particular unit. The workman has worked for 240 days. Hence he has acquired unfettered and indefeasible right to have the permanent status and as such he was deemed to be declared as permanent workman but the company has not extended the said benefit to him with some ulterior motive and thereby deprive him of his legitimate right and claim. The management, in order to confuse the matter, took the plea that the workman was appointed on casual basis.

3. No written statement is filed by the management despite service of notice. Hence the case proceeded exparte against the management and exparte evidence was recorded. The workman filed his affidavit in support of his case. However at the stage of argument the workman also remained absent.

4. The case of the workman is that the termination of his services which is subject mater of this reference is illegal and not justified in as much as the provisions of section 25F of the Act were not complied with by the

management of the company. The company's version could not be brought on the record as no written statement of the management is on the record.

5. For better appreciation of the point in controversy, It is apposite to reproduce the provisions of Section 25F of the Act which are as below:

25F. Conditions precedent to retrenchment of workmen.-

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [2] for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [3] or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

8. An analysis of the above reproduced provisions of section-25F of the Act shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Section 25-F of the Act are satisfied. Now before examining the compliance of provisions of section 25F of the Act, it is necessary to look into whether the workman concerned was in continuous service for not less than one year which is condition precedent for the application of section 25F of the Act. If answer is in the affirmative then only Clauses (a) and (b) of section 25F of the Act would apply.

9. "Continuous service" has been defined under section 25B of the Act, which says where a workman is not in continuous service within the meaning of clause (1) of section 25B of the Act for the period of one year or six months, he shall be deemed to be in continuous service under an employer when he has actually worked for not less than two hundred and forty days. The case of the workman is that he has worked for more than 240 days for the year preceding his termination. Now on the question of burden to prove the completion of 240 days of continuous work in the year in question, the Hon'ble Apex Court in **Range Forest Officer Vs S.T.Hadimani,** 2002 (93) FLR 179 has held--

"In our opinion the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

10. In **Rajasthan State Ganganagar S. Mills Ltd Vs State of Rajasthan & Another**, 2004 (4) LLN 845 : **Municipal Corporation, Faridabad Vs Srinibas**, 2004 (4) LLN 785 and **Madhya Pradesh Electricity Board Vs Hariram** , 2004 (4) LLN 839 the Hon'ble Supreme Court reiterated the principle that burden of proof lies on the workman to show that he had worked continuously for 240 days in the preceding one year prior to his alleged termination and it is for the workman to adduce evidence apart from examining himself to prove that the factum of his being in employment of the employer.

11. Referring and analyzing earlier judgments the Hon'ble Supreme Court again in leading case of **R.M Yellatti Vs The Assistant Executive Engineer, (2006)** 1 SCC 106 again held that burden lies on the workman concerned. The relevant paragraph of the judgment may be reproduced as below:

"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the afore stated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden

is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

12. Thus applying above principles to the facts of the present case, except for examining himself on affidavit the workman has filed no document to show that he had worked continuously for 240 days in the preceding one year prior to his alleged termination. The workman is alleged to have been terminated on 13th October 1980. Hence burden lies on the workman to show that he worked for 240 days in preceding one year prior to his termination i.e from October 1979 to September 1980, but there is nothing on record to prove this fact. The workman has filed copy of a document dated 31.08.1976 to show that he has worked from 31.08.1976 to 31.12.1976 but this document does not support the workman's case.

13. Thus in view of above, it cannot be said that the workman concerned worked continuously for one year as required by Section 25F of the Act. Hence protection of Section 25F is not available to the workman concerned and his termination is held to be valid and justified. The question under reference is answered in affirmative. The workman is not entitled for any relief.

14. The Award is passed accordingly.

Dated, Kolkata

The 23rd September 2020

Justice RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 9 अक्तूबर, 2020

का. आ. 941.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बडौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, ईरनाकुलम, कोचीन के पंचाट (संदर्भ सं. 21/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.10.2020 को प्राप्त हुआ था।

[सं. एल-39025/01/2020-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 9th October, 2020

S. O. 941.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, ERNAKULAM, Cochin as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 09.10.2020.

[No. L-39025/01/2020-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer
(Monday the 24th day of February 2020, 5 Phalguna 1941)

ID No. 21/2014

Workman : Shri. Manoharan K.
10 Lakshamveedu Colony
Thiruvankulam
Ernakulam – 682305
By Adv.Ashok B. Shenoy
M/s. ANP Associates

Management : The Regional Manager
Bank of Baroda
Regional Office, Vasudeva Building
T. D. Road
Ernakulam – 682011
By M/s. B.S. Krishnan Associates

This case coming up for final hearing on 09.01.2020 and this Tribunal-cum-Labour Court on 24.02.2020 passed the following:

AWARD

1. This is an application filed U/s 2(A)(2) of Industrial Disputes Act, 1947.

2. The workman was employed in the subordinate cadre as a Peon in the service of the management Bank at their M.G.Road, Ernakulam branch in Ernakulam district. He was employed from 21.08.2009. He was employed continuously and regularly against a regular and permanent vacancy to do regular and permanent nature of duties of Peon. He had been discharging all the duties entrusted to him diligently, honestly and without any complaints. On 23.11.2013 the workman's services were orally terminated by the Manager of M.G.Road, Ernakulam branch of the management Bank. The workman raised an industrial dispute against the management challenging the termination of his service before the Assistant Labour Commissioner (Central) on 29.11.2013. The conciliation proceedings ended up in failure. According to the workman, the termination of his service by the management amounts to retrenchment. The workman was employed continuously from 21.08.2009 to 23.11.2013 and he was retrenched from service of the Bank without any notice of retrenchment or wages in lieu of such notice as mandated by Sec 25F of the ID Act, 1947. The management did not pay any retrenchment compensation as mandated in Sec 25F of ID Act, 1947. Retrenchment of workman's service is therefore illegal, unjust and also null and void. It is also illegal, unjust and void for violation of provisions of Para 522, 523 and 524 of Sastri Award. Employees much junior in service to the workman are retained in service by the management. This is in violation of mandatory provisions of Sec 25G of the ID Act, 1947 and Para 507 of Sastri Award. The management employed fresh and new hands in service of the management against the very same work for which the workman was employed. This is in violation of Sec 25H of ID Act, 1947 and Clause 20.12 of 1stBipartite Settlement dt.19.10.1996 and Para 493 of Sastri Award. Hence the termination of the workman is illegal and is stained by malafide and victimization. The workman was treated by the management as temporary workman against permanent vacancy just to deprive him off the status and privilege of a permanent workman. By adopting this practice, the management was indulging in unfair labour practice prohibited U/s 25T of ID Act, 1947 and Para 495 and 522 of Sastri Award. In terms of clause 20.12 of the 1st Bipartite Settlement dt.19.10.1966 the management is bound to retain and absorb the workman in regular service especially when the vacancy against which he was employed is permanent and continues to exist. Since retrenchment the workman is without any job and income. Hence the workman pleaded that the action of the management in terminating the services of the workman w.e.f. 23.11.2013 be declared illegal and unjust and also declared that he be reinstated in service of the management with full back wages, continuity of service and other attended benefits.

3. The management filed written statement denying the allegations in the claim statement. The workman in this case was neither employed by the Bank nor any letter of appointment issued to him. Hence there is no question of terminating the service of the workman and application U/s 2A (2) of ID Act is not maintainable. The above dispute is not referred by appropriate Govt and the claim of the workman is required to be rejected on that ground also. The management is a nationalized public sector bank having prescribed rules and procedures,

policies and norms in the matter of recruitment in their regular service. For the appointment in the subordinate cadre, recruitment is made through notification through Employment Exchange and after complying the formalities of test and interview. The instructions and guidelines of Govt. of India and Reserve Bank of India in the matter of reservation are also being followed in the matter. The competent authority for sanctioning of regular post in the subordinate staff cadre in the management Bank is General Manager(HRM) and the appointment authority is the Regional Head. The Branch Managers have no authority for appointments in the management Bank. The workman is not appointed in the management Bank by the competent authority. He was not engaged in any regular vacancy in any branch of the Bank. There is no employer- employee relationship between the workman and the management. The workman was intermittently engaged as daily wager on casual/temporary basis at Ernakulam M.G.Road branch of the management Bank from 21.08.2009 to 23.11.2013. He was paid appropriate wages on daily basis. He was not engaged 240 or more days at any point of time. He was not engaged against a sanctioned post in the management Bank. It is not correct to allege that he was engaged against a regular and permanent vacancy. The workman was not given any appointment letter or even subjected to any recruitment procedure. The workman was engaged by Branch Manager who is not the appointing authority. Even if he worked for more than 240 days he will not be entitled to claim reinstatement as he was engaged by Branch Manager who is not the competent appointing authority for appointing subordinate staff. Management Bank is a public sector organization and is a "State" under Article 12 of the Constitution of India. Appointment to any post in the management is made only after complying with the statutory rules, regulations and directions issued by Govt of India from time to time. The appointment in the subordinate staff cadre is to be made by the competent authority only against sanctioned vacancies and also subject to fulfillment of eligibility criteria for such appointment. The appointment to the subordinate cadre can be done only through Employment Exchange. If suitable candidates are not available with Employment Exchange, the management can explore other sources of recruitment. The workman in this case was never sponsored by Employment Exchange and not subject to any recruitment procedure. The action of the management in dis-engaging the service of the workman is proper, legal and valid and there is no violation of the provisions of the ID Act or the provisions of the Sastri Award. It is baseless and incorrect to allege that the management has violated Sec 25F, 25G and 25H of the ID Act and the provisions of Bipartite Settlement and Sastri Award. It is baseless and incorrect to allege that the management is in the habit of employing workman against permanent vacancies one after another and retrench them to be replaced by new hands. The management denied any unfair labour practice or violation of provisions of ID Act, Bipartite Settlement and Sastri Award. Constitution of India envisages right of equality and equal opportunity in the matter of public employment under Article 14 and 16 of the Constitution. There is no fundamental right in those who have been employed on daily wages or on contractual basis to claim regularization and absorption in the regular service.

4. The workman filed replication denying the allegations in the written statement filed by the management. As per Sec 2A(2) of the ID Act, where any employer discharges, dismisses, retrenches or otherwise terminates the service of an individual workman, any dispute or difference between that workman and his employer connected with or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute not withstanding that no other workman or any union of workman is party to the dispute. The management Bank employed the workman on 11.08.2009 against a permanent vacancy of Peon. No permanent hand was posted thereafter till 23.11.2013 and the workman was employed continuously and regularly and was discharging the duties of regular and permanent nature. The workman was entrusted with duties of a sub staff and was under supervision of the branch authorities and had access to all areas in the premises of the branch including security areas. He had been paid wages against voucher slips duly authorised by branch authorities and accounted against bank's Profit & Loss account. The workman was also paid Bonus upto 23.11.2013 when his services were abruptly terminated without notice. The engagement of the workman by the Bank was continuous without break and even Sundays are considered as a paid holiday as is available to every permanent employees. The management Bank is having 85 branches and 2 Administrate Offices in Kerala and the permanent employees working in the 'state' in the subordinate cadre is only 90. There are considerable number of temporary sub staff entrusted with duties of permanent nature. The management had regularized 37 temporary sub staff entrusted with duties of permanent nature during the years 2009-10 and 2011. As many as 1966 officers were recruited through campus selection and the averment of the management that the recruitments are done only through proper notification and selection process is only to justify the denial of employment to the workman. After retrenchment of the workman w.e.f. 23.11.2013, a new temporary employee is engaged by the management in Ernakulam M.G.Road branch without affording the workman an opportunity for re-employment. Sponsorship by Employment Exchange is not a condition precedent for employment in the post and job against which the workman herein was employed in the management Bank. Permanent employment is denied to the workman by the management Bank only to deny him the benefits available to permanent employees.

5. On completion of pleadings, the workman examined himself as WW1 and marked Exbits.W1 and W2. Management examined MW1 and MW2 and marked Exbts.M1 to M7 and W3 & W4.

6. On the basis of the pleadings, the issue to be decided are

1. Whether the industrial dispute is maintainable?

2. Whether the termination of the workman by the management is illegal and whether he is entitled to be reinstated w.e.f. 23.11.2013.?

3. Relief and cost

7. **Issue No. 1 & 2**

The management pointed out that an application U/s 2A(2) of the ID Act is not maintainable as there is no employer-employee relationship between the workman and the management Bank. The management also pointed out that the dispute is not referred by the appropriate Govt. and the worker is not represented by any union. According to the learned Counsel for the workman, as per Sec 2A of the ID Act, where an employer discharges, dismisses, retrenches or otherwise terminate the services of an individual workman, any dispute or difference between the workman and his employer connected with or arising out of such discharge, dismissal retrenchment or termination shall be deemed to be an industrial dispute not withstanding that no other workman nor any union of the workman is party to the dispute. It is admitted by the management that the workman was engaged as a Peon on 11.08.2009 and he was dis-engaged on 23.11.2013. Hence there is no controversy on the fact that there is an industrial dispute as per Sec 2A of the ID Act and the industrial dispute is maintainable.

8. According to the workman, he was engaged as peon at M.G.Road, Ernakulam branch on 21.8.2009. He was continued to be employed till 23.11.2013. On 23.11.2013 the workman's services were orally terminated by the Branch Manager. According to the learned Counsel for the workman, the oral termination of the workman amounts to retrenchment. However he was not issued any notice of retrenchment nor wages in lieu of notice as mandated U/s 25F of ID Act, 1947. The retrenchment of the workman's service is therefore illegal, unjust and null and void in law. It is also in violation of Paras 522, 523 & 524 of Sastri Award. According to the learned Counsel for the management, the workman was never employed by the management Bank and intermittently used his services as daily wager on casual/temporary basis at M.G.Road, Ernakulam branch of the management Bank from 11.08.2009 to 23.11.2013, as and when there was some contingencies of work and he was paid daily wages for the services rendered by him. This engagement is only temporary/casual on a day to day basis and the workman has no right of employment in the management Bank. The management Bank is a nationalized bank and therefore follows prescribed rules and procedures for appointment in its regular service. For appointment in the subordinate staff cadre, the recruitment is made through notification in the employment exchange and after complying the formalities of test and interview. The workman was not given any appointment order and there was no retrenchment of the workman by the management Bank. According to the learned Counsel for the workman policies and procedures relied on by the management Bank are for regular recruitment and workman has no claim for regularization. According to the learned Counsel for the workman, the management resorted to regularization of temporary and casual subordinate staff on the basis of settlement between the union and the management. The learned Counsel for the workman also argued that on the basis of a Bipartite Settlement between the management Bank and All India Bank of Baroda Employees Federation, 37 temporary subordinate employees were appointed as permanent employees in Kerala branches from 2008 to 2011. The learned Counsel for the workman relied on Exbt.W4 agreement between the Management and the union to substantiate the point. The management relied on Exbt.M1 to point out that HR Resourcing Policy covers the appointment of subordinate staff also. According to the learned Counsel for the management, General Manager(HRM) is the competent authority to sanction the post of sub staff in various zones. It is seen in Para 7.0 of Exbt.M1, that there is a provision for engagement of sub staff on temporary basis. This provisions authorized engagement of sub staff for a limited period not exceeding 90 days by the branches. Such temporary engagement also requires the approval of General Manager(HRM). According to MW1, the Branch Managers also appoint subordinate staff on temporary basis. He also confirmed that Exbt.M1 document at Clause 7.3 authorises the Branch Managers to engage temporary staff and the Branch Managers are liable to report such appointments to General Manager(HRM) of regional office. He also confirmed that for not reporting such appointments to regional office, disciplinary action can be taken against Branch Managers. However no disciplinary action was taken against MW1 for appointing the workman as a temporary Peon and for not reporting the same to Regional Office. He has also stated in evidence that there was no audit objection regarding the appointment of the workman and also for payment of salary to him. He confirmed that Exbt.M2 to M7 will clearly indicate the number of days that the workman worked in the Bank every year during his service with the Bank. MW2 also confirmed in his evidence, that no departmental action was taken against the

Branch Manager for engaging the workman as a temporary Peon and paying him salary. From the above evidence it is very clear that the workman was appointed with the approval of the competent authority and the payments made to him were fully authorized.

9. The workman filed an application for production of certain records substantiate to his case that he was working with the management Bank for more than 240 days in one year immediately prior to his retrenchment. The management produced

1. True copy of the Savings Bank account statement for the period 16.01.2010 to 23.11.2013 for the A/c No.05600100011904 in the name of Sri. Manoharan, the workman in this case. This document is marked as Exbt.M2 in the proceedings.
2. True copy of the Ledger account statement of Sundry charges in A/c No. 05600054511004 maintained at Ernakulam main branch from 21.08.2009 to 23.11.2013. This document is marked as Exbt.M3.
3. True copy of the Debit vouchers relating to the wages paid to temporary employees in A/c No. 05600054511004 from 21.08.2009 to 23.11.2013. This document is marked as Exbt.M4 in this proceedings.
4. True copy of Form-C bonus paid statement under payment of Bonus Act, 1965 submitted to the controlling authority by Ernakulam main branch for the financial year ending 31.03.2010, 31.03.2011, 31.03.2012, and 31.03.2013. This document is marked as Exbt.M5 in this proceedings.
5. True copy of the statement of office account bonus paid A/c no.05600052431001 maintained at Ernakulam branch from 21.08.2009 to 31.03.2014. This document is marked as Exbt.M6 in this proceedings.
6. Debit vouchers relating to bonus paid to employees during the financial year 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013. This document is marked as Exbt. M7 in this proceedings.

10. On a perusal of Exbt.M3, it is seen that the workman was paid wages for 335 days immediately one year prior to his termination on 23.11.2013. Exbt.M4 is the corresponding debit vouchers relating to the wages paid to the workman. From Exbt. M5, the Form-C bonus paid statement for the year 2010-11 it is seen that the workman worked 307 days in the year and he was paid a salary of Rs.1,04,632/- and he was paid Bonus of Rs.8400/-. For the year 2012 he has worked for 307 days and was paid a salary of Rs.1,03,216/- and was paid Rs.7700/- as Bonus. For the year 2013, he worked for 318 days and was paid a salary of Rs.1,12,671/- and was paid Bonus of Rs.7700/-. The corresponding debit vouchers are also produced and is marked as Exbt.M7. The workman through these documents proved that he worked for more than 240 days during one year immediately before his termination on 23.11.2013. Hence the management is liable to follow the conditions precedent contemplated U/s 25F of ID Act, 1947 before termination of his service.

11. The learned Counsel for the management argued that the workman in this case is only a casual employee on daily wages and hence he is not entitled to claim the benefits U/s 25F of the ID Act. The learned Counsel for the workman relied on the decision of Hon'ble High Court of Kerala in **Sreekumar K.Vs Managing Director, KTDC Ltd,** 2019 (1) KHC 225 to point out that the definition in Sec 2(s)of the ID Act includes casual employees also. In the above case the Hon'ble High Court held that;

> " Para 18. From this it is quiet evident that the definition of the term 'workman' U/s 2(s) of the ID Act includes a casual employee as well and hence the decision cited (Supra) (in the context governed by the provisions of the workman's Compensation Act) is not at all attracted to the case in hand."

12. The learned Counsel for the management relied on the decision of the Hon'ble Supreme Court in **State of Karnataka Vs Uma Devi**, 2006 4 SCC 1 and the **State of Bihar and others Vs Devendra Sharma**, Civil Appeal no. 7879/2019, to argue that the management Bank being a 'state ' under Article 12 of the Constitution, no back door entry in service can be allowed violating Article 14 & 16 of the Constitution of India. The learned Counsel for the workman on the other hand relied on various decisions and argued that when there is a violation of the provisions of ID Act, the dictum laid down in the above decisions is clearly distinguishable. In **Ajaypal Singh Vs Haryana Warehousing Corporation,** (2015) 6 Supreme Court Cases 321 the Hon'ble Supreme Court considered the decision **in Uma Devi's case** (Supra) and held that ;

> "17. In **Uma Devi's case**, (3) this Court held that adherence to the rule of equality in public employment is a basic feature of our Constitution and since rule of law is a core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in

ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the constitution of India. The provisions of the Industrial Dispute Act and powers of the Industrial and Labour Court provided therein were not at all under consideration in Uma Devi's case (3). The issue pertaining to unfair labour practice was neither the subject matter for decision nor was decided in **Uma Devi's case**.

18. We have noticed that Industrial Disputes Act is made for the settlement of industrial disputes and certain other purposes as mentioned therein. It prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for long period without giving them the status and privilege of permanent employees.

19. Sec 25F of the Industrial Disputes Act, 1947 stipulates conditions precedent to retrenchment of workmen. A workman employed in any industry who has been in continuous service for not less than one year under an employer is entitled to benefit under the said provisions if the employer retrenches the workman. Such a workman cannot be retrenched until he/she is given one month notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of the notice apart from compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months. It also mandates the employer to serve a notice in the prescribed manner on the appropriate Govt. or such Authority as may be specified by appropriate Govt by notification in the official Gazette. If any part of the provisions of Sec 25F is violated and the employer there by, resorts to unfair trade practice with the object to deprive the workman with privilege as provided under the Act, the employer cannot justify such an action by taking a plea that the initial appointment of the employee was in violation of Articles 14 & 16 of the Constitution of India.

Para.20 - - - - - - - - - - - -- - - - - ---

Para.21 - -- --

Para 22. It is always open to the employer to issue an order of "retrenchment" on the ground that the initial appointment of the workman was not in conformity with Article 14 & 16 of the Constitution of India or in accordance with rules. Even for retrenchment for such ground, unfair labour practice cannot be resorted to and thereby the workman cannot be retrenched on such ground without notice, pay and other benefits in terms of Sec 25F of the Industrial Disputes Act, 1947, if continued for more than 240 days in a calendar year".

The above decisions was also quoted with approval by the Hon'ble Supreme Court in **Durgapur Casual Workers Union and others Vs Food Corporation of India and others**, (2015) 5 Supreme Court Cases 786. The Hon'ble Court held that an undertaking of the government which comes within the meaning of 'industry' or its establishment cannot justify its illegal action including unfair labour practice nor can ask for different treatment on the ground that public undertaking is guided by Articles 14 & 16 of Constitution of India and the private industries are not guided by 14 & 16 of the Constitution. In **Umrala Grama Panchayat Vs Secretary, Municipal Employees Union**, 2015 12 SCC 775 the Hon'ble Supreme Court directed that the services of the workmen in that case be regularized and made permanent since they worked for more than 240 days in a calendar year.

13. In view of the above, it is very clear that the management terminated the service of the worker in clear violation of the provisions of Sec 25F of the Industrial Disputes Act.

14. The workman also pleaded that he was terminated from the service of the management Bank in violation of Sec 25G of the ID Act, on the ground that the employees much junior in service to him were retained in service when he was terminated from the service of the Bank. The workman did not lead any evidence to substantiate and support violation of Sec 25G of the ID Act. The workman also alleged that the management appointed fresh hands against the post held by him for doing the same job which he was doing. Having retrenched him from service of the management Bank the workman has a right to be offered re-employment against any future vacancy in preference over others. The management failed to implement the mandate of Sec 25H of the ID Act. There is no evidence in the proceedings to support the case of the workman that the management violated Sec 25H of the ID Act. The workman also claimed that the management violated Sec 25T of the ID Act by resorting to the unfair labour practice of employing the workman as casual employee and continued his service for years together with the object of depriving him the status and privilege of a permanent workman. As per Sec 2(r)(a), "unfair labour practice" means any practice specified in the 5th Scheduled of the Act. In the 5th Schedule 1(X), "the action of the management to employ workman as badali's, casuals or temporary and to continue them as such for years with the object of depriving them the status and

privilege of permanent workman, is classified as an unfair labour practice on the side of the management. In this particular case, it is seen that the workman was appointed as a casual employee on 21.8.2009 and he continued till 23.11.2013 as a casual employee and his services were terminated when a regular employee joined the service of the management Bank. Hence it is very clear that the workman was working against a regular post for little over 3 years and his service were terminated when a regular employee joined the service of the management Bank. This is a clear case of unfair labour practice.

15. Considering all the above facts, pleadings and evidence in this case, I am inclined to hold that the termination of the workman from the services of the management Bank is abinito void and is in violation of Sec 25F of ID Act, 1947 and retaining him as daily wage employee for more than 3 years and denying him the benefits of a regular employee is an unfair labour practice in violating of Sec 25T of ID Act.

16. Issue No.3

Issue No.2 regarding the legality of termination of the workman was decided in favour of the workman and against the management. The learned Counsel for the workman argued that once this Tribunal found that the termination of the workman was illegal, he is entitled for reinstatement in service with full back wages. The learned Counsel for the management argued that in the special circumstances of this case, it may not be ideal to order reinstatement with full back wages and he argued that it is ideal to provide monetary compensation in the place of reinstatement. Relying on the decision of **State of Uttarakhand and others Vs Rajkumar,** 2019 1 LLJ 513 SC the learned Counsel for the management argued that the workman was a daily wages employee and he continued as a daily wage employee and is not entitled for regularization considering the spirit of the decision of Hon'ble Supreme Court in **State of Karnataka Vs Uma Devi**, (Supra). The Hon'ble Supreme Court in the above referred case relying on the decision of **BSNL Vs Bhurumal**, (2014) 7 SCC 177 and **District Development Officer and another Vs Satish Kantilal Amerelia** 2018 12 SCC 298 held that in the circumstances of that case it would be just and proper and reasonable to award lumpsum monetary compensation to the workman in full and final satisfaction of his claim of reinstatement and other consequential benefits. The Hon'ble Supreme Court has laid down the law on the subject in BSNL case (Supra) as follows;

> " Para 33. It is clear from the readings of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workmen are terminated illegally and/or malafide and/or by way of victimization, of unfair labour practice, etc. However when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Sec 25F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.
>
> Para 34. The reasons for denying the relief for reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non payment of retrenchment compensation and notice pay as mandatorily required U/s 25F of the ID Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated he has no right to seek regularization [see **State of Karnataka Vs Uma Devi**(3)]. Thus when he cannot claim regularisation and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself in as much as if he going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself in as much as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation giving the relief of reinstatement, that too after a long gap, would not serve any purpose.
>
> Para 35. We would, however, like to add a cavate here. There may be cases where termination of daily wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principles of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases reinstatement should be the rule and only in exceptional cases, for the reasons stated to be in writing, such relief can be denied.''

The learned Counsel for the workman on the other hand relied on the decision of the Hon'ble Supreme Court in **Jasmar Singh Vs State of Haryana and other**, 2015 4 SCC 458 and argued that the workman is entitled for reinstatement with full back wages since the order of termination was void abinitio. The Hon'ble Supreme Court in the above case relied on the following observation of the court in **Deepali Gundu Surwase Vs Kranti Junior Adyapak Mahavidyalaya,** 2013 10 SCC 324 to hold that when the termination is found to be illegal, the workman is entitled for reinstatement with back wages.

> " Para 22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from relatives and other aquittance to avoid starvation. These sufferings continued till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultravires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer was to deny back wages to the employee, or contesting his entitlement to get consequential benefits then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments".

In the above case, the Hon'ble Supreme Court was considering the case of a workman working as a daily paid worker in the office of Sub Divisional Officer (Karnal) for more than 240 days.

In the present case, it is true that the workman was engaged as a daily wage employee and he worked continuously for more than 240 days for one year before his termination and it is also found that his continued employment for prolonged time as a daily wage workman was an unfair labour practice U/s 25T of ID Act as he was engaged as a casual employee for years together with the object of depriving him off the status and privilege of permanent workman. The management failed to establish that the workman was gainfully engaged during the period of termination. Hence it is not a simple case where the procedure contemplated U/s 25F of ID Act is violated.

Considering all the facts, evidence and pleadings, I am inclined to hold that the workman is entitled for reinstatement in the service of the management Bank with full back wages, continuity of service and other consequential benefits.

Hence an award is passed holding that the termination of the workman from the services of the management Bank from 23.11.2013 is illegal, unjust and abinitio void. He is entitled to be reinstated in service of the Bank with full back wages, continuity of service and all other attended benefits.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 24th day of February, 2020.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the Workman:-

WW1 - Shri.Manoharan K., dt.07.04.2016

Witness for the Management:-

MW1 - Narayanan C., dt.18.09.2019

MW2 - Shri.Ziyad Rahuman M., dt.18.09.2019

Exhibits for the Workman:-

W1 - True copy of representation dt.29.11.2013 filed by workman before the Asst.Labour Commissioner(C), Ernakulam

W2 - True copy of the letter no.07/26/2013/D2 dt.07.03.2014 by Asst.Labout Commissioner (C), Ernakulam

W3 - True copy of letter dt.04.03.2013 issued by the Dy.General Manager, Bank of Baroda, Zonal Office, Chennai under RTI Act.

W4 - True copy of Tripartite Settlement dt.18.03.2008 between Bank of Baroda and All India Bank of Baroda Employees' Federation

W5 - True copy of Settlement dt.25.11.2013 between the management of Union Bank of India and the All India Bank of Union Bank of India Employees' Association.

W6 - True copy of Memorandum of Settlement dt.25.06.2013 between the management of Bank of India and Federation of Bank of India Staff Unions

W7 - True copy of letter dt.09.04.2013 of Asst.General Manager, State Bank of Travancore, Head Office, Trivandrum enclosing a Memorandum of Settlement dt.21.10.2011 between the management of SBT and SBT Employees Union.

W8 - True copy of Memorandum of Settlement dt.30.08.2014 between the management of Canara Bank and Canara Bank Employees Union.

W9 - True copy of DBOD.CORIA No.15968/04.03.001.2013/13 dt.09.05.2013 issued by Reserve Bank of India.

W10 - True copy of letter dt.27.02.2013 issued by the Dy. Manager, Bank of Baroda, Corporate Center, Bombay under RTI Act, 2005

Exhibits for the Management:-

M1 - True copy of the HR Resourcing Policy of Bank of Baroda

M2 - True copy of the statement of Account no.05600100011904 for the period 16.01.2010 to 23.11.2013.

M3 - True copy of the ledger account statement of Sundry charges. Account No.05600054511004 of Ernakulam main branch from 21.08.2009 to 23.11.2013

M4 - True copy of debit vouchers relating to wages paid to temporary employees account No.05600054511004 from 21.08.2009 to23.11.2013

M5 - True copy of Form C Bonus paid stamped statement submitted to the Controlling Authority by the Ernakulam Main Branch for the financial year ending 31.03.2010, 31.03.2011 31.03.2012 and 31.03.2013

M6 - True copy of the statement of Bonus account no.05600052431001 maintained at Ernakulami branch from 21.08.2009 to 31.03.2014

M7 - True copy of debit vouchers relating to bonus paid to employees during the financial years 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13.

नई दिल्ली, 9 अक्तूबर, 2020

का. आ. 942.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बडौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, ईरनाकुलम, कोचीन के पंचाट (संदर्भ सं. 33/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.10.2020 को प्राप्त हुआ था।

[सं. एल-39025/01/2020-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 9th October, 2020

S. O. 942.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, ERNAKULAM, Cochin as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 09.10.2020.

[No. L-39025/01/2020-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Monday the 24th day of February 2020,5 Phalguna1941)

ID No. 33/2012

Workman : Smt. Sunitha Lakshmanan K.V.
Avaramkottu House
Enanalloor, Kakkattoor
Muvattupuzha – 686675
By Adv. Ashok B. Shenoy

Management : The Assistant General Manager
Bank of Baroda
Regional Office
Vasudeva Building
T.D. Road
Ernakulam – 682011
By M/s.B.S. Krishna Associates

This case coming up for final hearing on 09.01.2020 and this Tribunal-cum-LabourCourt on24.02.2020 passed the following:

AWARD

1. This is an application filed U/s 2A(2) of Industrial Disputes Act, 1947.

2. The workman was employed in the subordinate cadre as a sweeper in the service of the management Bank at their Muvattupuzha branch in Ernakulam district. She was employed from 26.11.2007 since the branch started functioning. She was employed continuously and regularly against a regular and permanent vacancy to do regular and permanent nature of duties of sweeper. She had been discharging all the duties entrusted to her diligently, honestly and without any complaints. On 29.10.2011 the workman's services were orally terminated by the Manager of Muvattupuzha branch of the management Bank. The workman raised an industrial dispute against the management challenging the termination of her service before the Assistant Labour Commissioner (Central) on 31.10.2011. The conciliation proceeding sended up in failure. According to the workman the termination of her service by the management amounts to retrenchment. The workman was employed continuously from 26.11.2007 to 29.10.2011 and she was retrenched from service of the Bank without any notice of retrenchment or wages in lieu of such notice as mandated by Sec 25F of the ID Act, 1947. The management did not pay any retrenchment compensation as mandated in Sec 25F of IDAct, 1947. Retrenchment of workman's service is therefore illegal, unjust and also null and void. It is also illegal, unjust and void for violation of provisions of Para 522, 523 and 524 of Sastri Award. Employees much junior in service to the workman are retained in service by the management. This is in violation of mandatory provisions of Sec 25G of the ID Act, 1947 and Para 507 of Sastri Award. The management employed fresh and new hands in service of the management against the very same work for which the workman was employed. This is inviolation of Sec 25H of ID Act, 1947 and Clause 20.12 of 1stBipartite settlement dt.19.10.1996 and Para 493 of Sastri Award. Hence the termination of the workman is illegal and is stained by malafide and victimization. The workman was treated by the management as temporary workman against permanent vacancy just to deprive her off the status and privilege of a permanent workman. By adopting this practice, the management was indulging in unfair labour practice prohibited U/s25T of ID Act, 1947 and Para 495 and 522 of Sastri Award. In terms of clause 20.12 of the 1st Bipartite Settlement dt.19.10.1966 the management is bound to retain and absorb the workman

in regular service especially when the vacancy against which she was employed is permanent and continues to exist. Since the retrenchment the workman is without any job and income. Hence the workman pleaded that the action of the management in terminating the services of the workman w.e.f. 29.10.2011 be declared illegal and unjust and also declared that she be reinstated in service of the management with full back wages, continuity of service and other attended benefits.

3. The management filed written statement denying the above allegations. According to the management, the above application and the adjudication here on are not maintainable under law. The workman was neither employed in the bank nor any letter of appointment was issued to her and therefore there is no question of termination of her service. Hence application U/s 2A(2) of ID Act is not maintainable. The above dispute is not maintained by appropriate Govt and hence there is no industrial dispute contemplated under the ID Act. The workman is not represented by any union and hence the application is liable to be dismissed.

4. The management is a nationalized public sector Bank with prescribed rules and policies in the matter of recruitment into its regular service. For appointment in the subordinate cadre, recruitment is made through notification to Employment Exchange and after complying with the formalities of test and interview. The instructions and guidelines of Govt and Reserve Bank of India in the matter of reservation are also strictly followed in the matter of recruitment. The competent authority for sanctioning of regular post in the subordinate staff cadre in the management Bank is General Manager (HRM) and the appointing authority is the Regional Head. The Branch Managers can neither sanction nor appoint staff in the subordinate cadre in the management Bank. The worker in the dispute was not appointed in the management Bank by the competent authority. She was not engaged in any regular vacancy in any branch of the Bank. She was not appointed an employee of the managementBank. There is no employer-employee relationship between the worker and the management. The worker was intermittently engaged as daily wager on casual/temporary basis at the Muvattupuzha branch of themanagement Bank during 26.11.2007 to 29.10.2011. She was being paid appropriate wages on daily basis. She was not engaged 240 days at any point of time. She was not engaged against a sanctioned post in the management Bank. The worker was not subjected to any recruitment process by the management Bank and no appointment letter was given to her. The worker was engaged by Branch Manager who is not the appointing authority or the sanctioning authority in the management Bank. Temporary and casual engagements on day to day basis will not create any right of employment in the management Bank. The worker was engaged intermittently as daily wager from 26.11.2007 to 29.10.2011 as sweeper cum peon. Her engagement for 240 days or above alone will not entitle her to claim reinstatement or regularization in the service of the Bank. Her engagement was through Branch Manager who is not the competent appointing authority for subordinate staff in the management Bank. The management is a public sector Bank and is a "State" under Article 12 of the Constitution of India. Appointment to any post in the management is made only after complying with the statutory rules, regulations and directions issued by Govt of India from time to time. The appointment in the subordinate staff cadre is to be made by the competent authority only against sanctioned vacancies and also subject to fulfillment of eligibility criteria for such appointment. The appointment to the subordinate cadre can be done only through Employment Exchange. If suitable candidates are not available with Employment Exchange, the management can explore other sources of recruitment. The workman in this case was never sponsored by Employment Exchange and not subject to any recruitment procedure. The action of the management in dis-engaging the service of the workman is proper, legal and valid and there is no violation of the provisions of the ID Act or the provisions of the Sastri Award. It is baseless and incorrect to allege that the management has violated Sec 25F, 25G and 25H of the ID Act and the provisions of Bipartite Settlement and Sastri Award. It is baseless and incorrect to allege that the management is in the habit of employing workman againstpermanentvacancies one after another and to retrench them to be replaced by new hands. The management denied any unfair labour practice or violation of provisions of ID Act, Bipartite Settlement and Sastri Award. Constitution of India envisages right of equality and equal opportunity in the matter of public employment under Article 14 and 16 of the Constitution. There is no fundamental right in those who have been employed on daily wages or on contractual basis to claim regularization and absorption in the regular service.

5. The worker filed replication denying the allegations in the written statement filed by the management. As per Sec 2A(2) of the ID Act, where any employer discharges, dismisses, retrenches or otherwise terminates the service of an individual workman, any dispute or difference between that workman and his employer connected with or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute not withstanding that no other workman nor any union of workman is party to the dispute. The management Bank employed the workman on 26.11.2007 against a permanent vacancy of Sweeper when the branch of the management Bank was opened. No permanent hand was posted thereafter till 29.10.2011 and the workman was employed continuously and regularly and was discharging the duties of regular and permanent nature. The workman was entrusted with duties of a substaff and was under supervision of the branch authorities and had access to all areas in the premises of the branch including security areas. She had been paid

wages against voucher slips duly authorised by branch authorities and accounted against bank's Profit &Loss account. The workman was also paid bonus upto 29.10.2011 when her services were abruptly terminated without notice. The engagement of the workman by the Bank was continuous without break and even Sundays are considered as a paid holiday as is available to every permanent employees. The management Bank is having 85 branches and 2 Administrate Offices in Kerala and the permanent employees working in the 'state' in the subordinate cadre is only 90. There are considerable number of temporary sub staff entrusted with duties of permanent nature. The management had regularized 37 temporary sub staff entrusted with duties of permanent nature during the years 2009-10 and 2011. As many as 1966 officers were recruited through campus selection and the averment of the management that the recruitments are done only through proper notification and selection process is only to justify the denial of employment to the workman. After retrenchment of the workman w.e.f. 29.10.2011, a new temporary employee is engaged by the management in Muvattupuzha branch without affording the workman an opportunity for re-employment. Sponsorship by Employment Exchange is not a condition precedent for employment in the post and job against which the workman herein was employed in the management Bank. Permanent employment is denied to the workman by the management Bank only to deny her the benefits available to permanent employees.

6. After completion of pleadings, the worker filed an IA seeking production of the following documents.

1. Statement of A/c No.31140100000282 maintained at Muvattupuzha branch of the management Bank in the name of the workman for the period from 26.11.2011 to 29.10.2011

2. Ledger a/c statement of Sundry charges and others A/c No.3114005454511004 maintained at Muvattupuzha branch of the management Bank for the period from 26.11.2011

3. Debit vouchers relating to wages paid to the temporary staff employees to the debit A/c No.31140054554511004 maintained at Muvattupuzha branch of the management Bank for theperiod from 26.11.2011 to 29.11.2011.

4. Form-C bonus paid statement/register under payment of Bonus Act, 1965 of Muvattupuzha branch of the management Bank for the financial year ended 31.03.2008, 31.03.2009, 31.03.2010, 31.03.2011 and 31.03.2012.

The management produced item no. 1 & 2 and few debit vouchers of item no. 3 and Form-C bonus for the year 2010-11 and 2011-12 against item no.4. Thedocuments produced by the management were taken on record. The management examined MW1 and marked Exbt M1. The marking of Exbt. M1 was objected by the workman on the ground that it is an incomplete document. Workman examined WW1 ad WW2 and marked exhibits W1,W8 in addition to the documents called for and produced by the Management. Marking of exhibits W2to W7 were objected to by the Management on the ground that the Management is not a party to any of those documents. Hence the documents were marked subject to objection.

7. On the basis of the pleadings, the issue to be decided are ;

1. Whether the industrial dispute is maintainable ?

2. Whether the termination of the worker by the management is illegal and whether she is entitled to be reinstated w.e.f. 29.11.2011?

3. Relief and cost

8. <u>Issue No.1 & 2</u>

The management pointed out that an application U/s2A(2) of the ID Act is not maintainable as there is no employer-employee relationship between the worker and the management Bank. The management also pointed out that the dispute is not referred by the appropriate Govt and the worker is not represented by any union. According to the learned Counsel for the worker, as per Sec 2A of the ID Act, where an employer discharges, dismisses, retrenches or otherwise terminate the services of an individual workman, any dispute or difference between the workman and his employer connected with or arising out of such discharge,dismissal retrenchment or termination shall be deemed to be an industrial dispute not withstanding that no other workman nor any union of the workman is party to the dispute. It is admitted by the management that the worker was engaged as a Sweeper on 26.11.2007 and she was dis-engaged on 29.10.2011. Hence there is no controversy on the fact that there is an industrial dispute as per Sec 2A of the ID Act and the industrial dispute is maintainable.

9. According to the worker, she was engaged by the management Bank on 26.11.2007 when the Muvattupuzha branch of the management Bank commenced its operations. She was engaged as a Sweeper and she continued to be employed till 29.10.2011 continuously and regularly against a regular and permanent vacancy and was doing regular and permanent nature of duties. On 29.10.2011, her services are orally

terminated by the Branch Manager. According to the learned Counselfor the worker, the oral termination of the worker amounts to retrenchment. However she was not issued with any notice of retrench mentnor wages in lieu of notice as mandated by Sec 25F of ID Act, 1947. Retrenchment of the worker's service is therefore illegal, unjust and null and void in law. It is also in violation of Paras 522, 523 and 524 of Sastri Award. According to the learned Counsel for the management, the worker was never employed by the management Bank and intermittently use her service between 26.11.2007 to 29.10.2011 and she was paid daily wages for the services rendered by her. Her engagement was only temporary/casual on a day to day basis and the worker has no right of employment in the management Bank. The managementBank is a nationalized Bank and therefore follows prescribed rules and procedures for appointment in its regular service. For appointment in the subordinate staff cadre the recruitment is made through notification in the Employment Exchange and after complying with the formalities of test and interview. The worker was not given any appointment order and therefore there was no retrenchment of the worker by the management Bank.According to the learned Counsel for the worker the policies and procedures relied on by the management are for the regular recruitment and the worker has no claim for regularization.With regard to the policies also the workman through WW2 established that the management Bank resorted to regularization of temporary and casual subordinate staff on the basis of settlement between the union and the management. It is also pointed out that as per Exbt.W2 that there is a Bipartite Settlement between the management Bank and All India Bank of Baroda Employees Federation for absorption of casual/temporary peons/sweepers in 3 phases. As per Exbt.W1 it is pointed out that 37 temporary subordinate employees were appointed as permanent employees in Kerala branches from 2008-2011. The management relied on Exbt.M1 to point out that the HR resourcing policy covers the appointment of subordinate staff also. According to the learned Counsel for the management, General Manager(HRM) is the competent authority to sanction the post of substaff in various zones. However the learned Counsel for the worker pointed out that the specific guidelines and criteria for recruitment in subordinate staff cadre forms part of Exbt.M1 as Annexure1, which is not enclosed along with Exbt.M1. Further it is also seen that at Para 7.0 of Exbt.M1 that there is a provision for engagement sub staff on temporary basis. This provision authorized engagement of temporary sub staff for a limited period not exceeding 90 days by the branches in rural and semi urban centers. Such temporary engagement also requires the approval of General Manager (HRM). According to MW1, Muvattupuzha branch of the management Bank is considered as a semi urban branch. It has also come out in evidence that they were not having any regular sweepers till 29.10.2011 from 26.11.2007 when the branch operations started. MW1 did not deny the fact that there was a sanctioned post of sweeper when the Muvattupuzha branch of the management Bank was opened on 26.11.2007. Further he admitted that the worker was being engaged as a sweeper from 26.11.2007. It is admitted by MW1 that the accounts of the Muvattupuzha branch was audited every year and the payment of wages to the worker was being done through Profit &Loss account Sundry charges through vouchers. The auditors never pointed out any irregularity in the wages paid to the worker and no action was also taken against the Manager who made such appointment and payment. Hence it is only probable that the engagement of the worker had the approval of the competent authority and the payments made to her were fully authorized.

10. Having found that the worker was engaged by the management Bank against a permanent vacancy the further issue to be decided is whether her oral termination on 29.10.2011 is in violation of the provisions of Sec 25F of ID Act, 1947. The worker filed an IA seeking production of certain crucial documents to substantiate her claim that she worked with the management Bank continuously for more than 240 days one year immediately prior to her retrenchment. The management produced the statement of account in respect of the A/c no. 31140100000282 of the worker maintained at Muvattupuzha branch of the management Bank for the period from 26.11.2007 to 29.10.2011. The management also produced Ledger A/c statement of Sundry charges in A/c no.31140054511004 maintained by the Muvattupuzha branch of the management Bank from 26.11.2007 to 29.10.2011. The management produced few debit vouchers relating to wages paid to temporary sub staff employees to the debit of A/c no.31140054511004 maintained at Muvattupuzha branch of the management Bank for the period 26.11.2007 to 29.10.2011. The management failed to produce substantial part of the debit vouchers which otherwise would prove whether the worker, worked for more than 240 days in an year immediately prior to her retrenchment on 29.10.2011. The management also produced true copies of the Form-C bonus paid for the year 2010-11 and 2011-12. According to the learned Counsel for the worker the debit vouchers relating to the wages paid to the worker from 26.11.2007 to 29.10.2011 is very crucial in establishing the claim of the worker. The management has not provided any explanation in the affidavit filed in IA no.118/2013 for non production of these documents. Having failed to produce these crucial documents the learned Counsel submitted that an adverse presumption will have to be drawn against the management. The learned Counsel relied on the decision of **Gauri Shankar Vs. State of Rajasthan**, 2015 12 SCC 754. In the above case, the workman was working with the respondent and his case was that he was appointed against a permanent and sanctioned post w.e.f.01.01.1987 till his services came to be retrenched and he had rendered service of more than 240 days in every calendar year and hasreceived salary from the respondent department

each month. The workman challenged the retrenchment as bad in law as the same is in violation of Sec 25F, 25G, 25H, 25T and 25U of theID Act. Theworkman applied for production of the Muster Roll and the management failed to produce the relevant Muster Rolls. The Hon'ble Supreme Court relying on its earlier decisions in **Gopal Krishna G Ketker Vs Muhammed Haji Latheef,** AIR 1968 SC 1413 and **Murukesam Pillai Vs Manikyavasaka Pandara,** 1917 5 LW 759 held that even if the burden of proof does lie on a party the Court can draw an adverse inference if he withholds important documents in his possession which can throw light on the facts of issue. The learned Counsel for the workman also relied on the decision of the Hon'ble Supreme Court in **SriramIndustrial Enterprises Ltd Vs Mahak Singh and others**, 2007 4 SCC 94, wherein the Hon'ble Supreme Court held that when the workman discharged their initial onus by producing the documents in their possession it is the responsibility of the management to disprove the claim of the workman that he did not work for more than 240 days with the management one year immediately prior to his/her termination. In this particular case the debit vouchers for payment to theworker is a crucial document in the custody of the management to substantiate her claim of working morethan 240 days in a year immediately before her retrenchment. The management has not offered any explanation for non production of such a crucial document. Hence an adverse presumption can be drawn that the worker worked continuously for 240 days immediately prior to her retrenchment. Further the true copy of the ledger A/c statement of Sundry charges of Muvattupuzha branch from 26.11.2007 to 29.10.2011 would show the details of payment of wages made to the worker during the said period. On a detailed analysis of the payments made to theworker as reflected in the Ledger A/c statement of Sundry charges, it can be seen that the worker worked for 365 days from 28.10.2010 to 28.10.2011, one year immediately prior to her retrenchment. The Bank A/c of the worker however does not reflect all those payments made to her as per the ledger A/c statement of Sundry charges. It is also seen from the true copy of Form-C bonus paid in the year 2010-11 that the worker worked for 365 days during the year 2010-11 and she was paid a bonus of Rs.8400/- for the period up to 29.10.2011. Also it is seen that bonus of Rs.5560/- was paid to her for the year 2011-12 upto 29.10.2011. The worker through these documents proved that she worked for more than 240 days during one year immediately before her termination. Hence the management is liable to follow the condition precedent before the retrenchment of the workman contemplated U/s 25 of the ID Act, 1947 before termination of her service.

11. The learned Counsel for the management argued that the worker in this case is only a casual employee on daily wages and hence she is not entitled to claim the benefits U/s 25F of the ID Act. The learned Counsel for the worker relied on the decision of Hon'ble High Court of Kerala in **Sreekumar K. Vs Managing Director, KTDC Ltd,** 2019 (1) KHC 225 to point out that the definition in Sec 2(s) of the ID Act includes casual employees also. In the above case the Hon'ble High Court held that;

> " Para 18. From this it is quiet evident that the definition of the term 'workman' U/s 2(s) of the ID Act includes a casual employee as well and hence the decision cited (Supra)(in the context governed by the provisions of the workman's Compensation Act) is not at all attracted to the case in hand."

12. The learned Counsel for the management relied on the decision of the Hon'ble Supreme Court in **State of Karnataka Vs Uma Devi**, 2006 4 SCC 1 and the **State of Bihar and others Vs Devendra Sharma**, Civil Appeal no. 7879/2019, to argue that the management Bank being a 'state' under Article 12 of theConstitution, no back door entry in service can be allowed violating Article 14 & 16 of the Constitution of India. The learned Counsel for the worker on the other hand relied on various decisions and argued that when there is a violation of the provisions of ID Act, the dictum laid down in the above decisions is clearly distinguishable. In **Ajaypal SinghVs Haryana Warehousing Corporation,** (2015) 6 Supreme Court Cases 321 the Hon'ble Supreme Court considered the decision in **Umadevi's** case (Supra) and held that ;

> "17. In Uma Devi's case, (3) this Court held that adherence to the rule of equality in public employment is a basic feature of our Constitution and since rule of law is a core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution of India. The provisions of the Industrial Disputes Act and powers of the Industrial and Labour Court provided therein werenot at all under consideration in **Uma Devi's case** (3). The issue pertaining to unfair labour practice was neither the subject matter for decision nor was decided in **Uma Devi's case**.
>
> 18. We have noticed that Industrial Dispute Act is made for the settlement of industrial disputes and certain other purposes as mentioned therein. It prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for long period without giving them the status and privilege of permanent employees.

19. Sec 25F of the Industrial Disputes Act, 1947 stipulates conditions precedent to retrenchment of workmen. A workman employed in any industry who has been in continuous service for not less than one year under an employer is entitled to benefit under the said provisions if the employer retrenches the workman. Such a workman cannot be retrenched until he/she is given one month notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of the notice apart from compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months. It also mandates the employer to serve a notice in the prescribed manner on the appropriate Govt or such Authority as may be specified by appropriate Govt by notification in the official Gazette. If any part of the provisions of Sec 25F is violated and the employer here by, resorts to unfair trade practice with the object to deprive the workman with privilege as provided under the Act, the employer cannot justify such an action by taking a plea that the initial appointment of the employee was in violation of Articles 14 & 16 of the Constitution of India.

(20) -

(21) -

Para 22. It is always open to the employer to issue an order of "retrenchment" on the ground that the initial appointment of the workman was not in conformity with Article 14 &16 of the Constitution of India or in accordance with rules. Even for retrenchment for such ground, unfair labour practice cannot be resorted to and thereby the workman cannot be retrenched on such ground without notice, pay and other benefits in terms of Sec 25F of the Industrial Disputes Act, 1947, if continued for more than 240 days in a calendar year".

The above decisions was also quoted with approval by the Hon'ble Supreme Court in **Durgapur Casual Workers Union and others vs Food Corporation of India and others**, (2015) 5 Supreme Court Cases 786. The Hon'ble Court held that an undertaking of the government which comes within the meaning of 'industry' or its establishment cannot justify its illegal action including unfair labour practice nor can ask for different treatment on the ground that public undertaking is guided by Articles 14 &16 of Constitution of India and the private industries are not guided by 14 &16 of the Constitution. In **Umrala Grama PanchayatVs Secretary, Municipal Employees Union**, 2015 12 SCC 775 the Hon'ble Supreme Court directed that the services of the workmen in that case be regularized and made permanent since they worked for more than 240 days in a calendar year.

13. In view of the above, it is very clear that the management terminated the service of the worker in clear violation of the provisions of Sec 25F of the Industrial Disputes Act.

14. The worker also pleaded that she was terminated from the service of the management in violation of Sec 25G of the ID Act,on the ground that the employees much junior in service to her were retained in service when she was terminated from the service of the establishment. The worker did not lead any evidence to substantiate and support violation of Sec 25Gof theID Act. The worker also alleged that the management appointed fresh hands against the post held by her for doing the same job which she was doing. Having retrenched her from service of the management the worker has a right to be offered re-employment against any future vacancy in preference over others. Since the management failed to implement the mandate of Sec 25H, they violated the provisions of Sec 25H of ID Act. It is seen from evidence of MW1 that the worker worked as Sweeper in Muvattupuzhabranch till November 2011 till a permanent sweeper joined the service of the managementBank at Muvattupuzha. This clearly shows that the management appointed a new sweeper in the place of worker in violation of provisions of 25H of ID Act. The worker also claimed that the management violated Sec 25T of the ID Act by resorting to the unfair labour practice of employing the worker as casual worker and continued her service for years together with the object of depriving her the status and privilege of a permanent worker. As per Sec 2(r)(a), "unfair labour practice" means any practice specified in the 5th Schedule of the Act. In the 5th Schedule I (x) "the action of the management to employ workman as badali's, casuals or temporary and to continue them as such for years, with the object of depriving them of the status and privilege of permanent workman, is classified asan unfair labour practice, on the side of the management". In this particular case,it is seen that the worker was appointed as a casual sweeper on 26.11.2007 and she continued till 29.10.2011 as a casual sweeper and her serviceswereterminated when a regular sweeper joined the service of the management Bank at Muvattupuzha branch. Hence it is very clear that there was a post of Sweeper against which the worker was appointed on casual basis and she continued her service with Bank for almost 4 years drawing daily wages. It is a fact that she is denied the facility of a regular sweeper when another person is appointed in her place to do the same work what the worker was doing in the Muvattupuzha branch of the management Bank. This is a clear case of unfair labour practice.

15. Considering all the above facts, pleadings and evidence in this case, I am inclined to hold that the termination of the worker from the services of the management Bank is abinitio void and is in violation of Sec 25F of ID Act, 1947 and retaining her as a daily wage employee for almost 4 years and denying her the benefits of regular employees is an unfair labour practice in violation of Sec 25T of ID Act.

16. Issue No.3

Issue no.2 regarding the legality of termination of theworker was decided in favour of the worker and against the management. The learned Counsel for the worker argued that once this Tribunal found that the termination of the worker was illegal, she is entitled for reinstatement in service with full back wages. The learned Counsel for the management argued that in the special circumstances of this case, it may not be ideal to order reinstatement with full back wages and he argued that it is ideal to provide monetary compensation in the place of reinstatement. Relying on the decision of **State of Uttarakhand and others Vs Rajkumar,** 2019 1 LLJ 513 SC the learned Counsel for the management argued that the worker was a daily wages employee and he continued as a daily wage employee and is not entitled for regularization considering the spirit of the decision of Hon'ble Supreme Court in **State of Karnataka Vs Uma Devi**, (Supra). The Hon'ble Supreme Court in the above referred case relying on the decision of **BSNL Vs Bhurumal**, (2014) 7 SCC 177 and **District Development Officer and another Vs Satish Kantilal Amerelia** 2018 12 SCC 298 held that in the circumstances of that case it would be just and proper and reasonable to award lumpsum monetary compensation to the workman in full and final satisfaction of his claim of reinstatement and other consequential benefits. The Hon'ble Supreme Court has laid down the law on the subject in BSNL case (Supra) as follows;

> "Para 33. It is clear from the readings of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workmen are terminated illegally and/or malafide and/or by way of victimization, of unfair labour practice, etc. However when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Sec 25F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should given monetary compensationwhich will meet the ends of justice. Rationale for shifting in this direction is obvious.
>
> Para 34. The reasons for denying the relief for reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non payment of retrenchment compensation and notice pay as mandatorily required U/s 25F of the ID Act, evenafter reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and evenafter he is reinstated he has no right to seek regularization [see **State of Karnataka Vs Uma Devi** (3)]. Thus when he cannot claim regularisation and he has no right to continue even asa daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself in as much as if he is terminated again after reinstatement, he would receive monetary compensationonly in the form of retrenchment compensation and notice pay. In such a situation giving the relief of reinstatement, that too after a long gap,would not serve any purpose.
>
> Para 35. We would however, like to add a cavate here. There may be caseswhere termination of daily wage worker is found to be illegal on theground that it was resorted to as unfair labour practice or in violation of the principles of last come first go viz. while retrenching sucha worker daily wage juniorstohim were retained. There may also be a situation that persons junior to him were regularisedunder some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases reinstatement should be the rule and only in exceptional cases, for the reasons stated to be in writing, such relief can be denied.''

The learned Counsel for the worker on the other hand relied on the decisions of the Hon'ble Supreme Court in **Jasmar Singh Vs State of Haryana and other**, 2015 4 SCC 458 and argued that the worker is entitled for reinstatement with full back wages since the order of termination was void abinitio. The Hon'ble Supreme Court in the above case relied on the following observation of the court in **Deepali Gundu Surwase Vs Kranti Junior Adyapak Mahavidyalaya,** 2013 10 SCC 324 to hold that when the termination is found to be illegal, the workman is entitled for reinstatement with back wages.

> " Para 22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which

he would have been but for the illegal action taken by the employer. The injury suffered bya person who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from relatives and other aquittance to avoid starvation. These sufferings continued till the competentadjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultravires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer was to deny back wages to the employee, or contesting his entitlement to get consequential benefits then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments".

In the above case, the Hon'ble Supreme Court was considering the case of a workman working as a daily paid worker in the office of Sub Divisional Officer (Karnal) for morethan 240 days.

In the present case, it is true that the workman was engaged as a daily wage employee and she worked continuously for more than 240 days for one year before her termination and it is also found that her continued employment for prolonged time as a daily wage worker was an unfair labour practice U/s 25T,as she was engaged as a casual employee for years together with the object of depriving her off the status and privilege of permanent workman. The management failed to establish that the worker was gainfully engaged during the period of termination. Hence it is not a simple case where the procedure contemplated U/s 25F of ID Act is violated.

Considering all the facts, evidence and pleadings, I am inclined to hold that the worker is entitled for reinstatement in the service of the managementBank with full back wages, continuity of service and other consequential benefits.

Hence an award is passed holding that the termination of the worker from the services of the managementBank from 29.10.2011 is illegal, unjust and abinitio void. She is entitled to be reinstated in service of the Management Bank with full back wages, continuity of service and all other attended benefits.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 24th day of February, 2020.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the Workman:-

WW1 - Smt. Sunitha Lakshmanan, dt. 30.03.2015

WW2 - Shri.V.N. Krishnan dt.11.12.2015

Witness for the Management:-

MW1 - Shri. Babu Sebastian, dt. 01.04.2016

Exhibits for the Workman:-

W1 - Original letter dt.04.3.2013 issued by the Deputy General Manager, Bank of Baroda, Zonal Office, Chennai under RTI Act

W2 - True copy of the Tripartite Settlement dt.18.03.2008 between Bank of Baroda and All India Bank of Baroda Employees' Federation (Recognized Union)

W3 - True copy of settlement dt. 25.11.2013 between the management of Union Bank of India and the All India Union Bank of India Employees' Association

W4 - True copy of Memorandum of Settlement dt. 25.06.2013 between the Management of Bank of India and Federation of Bank of India Staff Unions

W5 - Original letter dt.09.04.2013 of Asst.General Manager, State Bank of Travancore, Head Office, Trivandrum enclosing a Memorandum of Settlement dt.21.10.2011 between the management of SBT and SBT Employees Union (Recognized Union)

W6 - True copy of Memorandum of Settlement dt. 30.08.2014 between the Management of Canara Bank and Canara Bank Employees Union

W7 - True copy of DBOD. CORIA No.15968/04.03.001.2013/13dt. 09.05.2013 issued by Reserve Bank of India under RTI Act, 2005

W8 - Original letter dt. 27.02.2013 issued by the Dy. Manager, Bank of Baroda, Corporate Center, Bombay under RTI Act, 2005

Exhibits for the Management:-

M1 - True copy of the HR Resourcing Policy of the Management Bank

The documents produced by the management as directed by the Tribunal

M2 - True copy of the statement of A/c No.31140100000282 maintained at Moovattupuzha branch from 26.11.2007 to 29.10.20111

M3 - True copy of the Ledger Account statement of Sundry charges A/c No.31140054511004 of Moovattupuzha branch from 26.11.2007 to 29.10.20111

M4 - True copies of the available Debit vouchers relating to wages paid from 26.11.2007 to 29.10.20111

M5 - True copies of the Form-C bonus paid for the year 2010-11, 2011-12.

नई दिल्ली, 9 अक्तूबर, 2020

का. आ. 943.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. भारत पैट्रोलियम कोरपोरेशन लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, ईरनाकुलम, कोचीन के पंचाट (संदर्भ सं. 12/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.10.2020 को प्राप्त हुआ था।

[सं. एल-30011/48/2016-आईआर (एम)]

नवीन वैध, उप निदेशक

New Delhi, the 9th October, 2020

S. O. 943.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, ERNAKULAM, Cochin as shown in the Annexure, in the industrial dispute between the management of M/s. Bharat Petroleum Corporation Ltd., and their workmen, received by the Central Government on 09.10.2020.

[No. L-30011/48/2016-IR(M)]

NAVIN VAIDYA, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer
(Monday the 10th day of February 2020, 21 Magha 1941)

ID No. 12/2017

Workman/Unions : 1. The Vice President
Loading & General Workers Union (INTUC)
BPCL Bottling Plant, Meenamkulam
Kazhakootam
Trivandrum – 695582

2. The Working President
Kerala Petroleum & Gas Workers Union (CITU)
EMS Mandiram,
Kalabhavan Road, Kochi
Ernakulam – 682018

3. The General Secretary
All Kerala Head Load Workers Union (AITUC)
Kazhakootam Mandalam Committee
RPN Building
Kazhakootam
Trivandrum – 695582
By Adv. Ashok B. Shenoy

Managements : 1. The Territory Co-ordinator
M/s. Bharat Petroleum Corporation Ltd.
Meenamkulam
Kazhakootam
Trivandrum - 695582

2. The President
All Petroleum Product Transporters
Association
C/o BPCL, Meenamkulam
Kazhakootam
Trivandrum – 695582

This case coming up for final hearing on 14.01.2020 and this Tribunal-cum-Labour Court on 10.02.2020 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-30011/48/2016-IR(M) dated 20.03.2017 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

"Whether the demand of the Unions for 20% bonus for the year 2015-16 and the stand taken by the management for settling the same for minimum bonus IE:@Rs.7000/- for the period under reference is fair and justifiable ? If not to what relief the parties are entitled to ?"

3. Union no.1 & 2 filed common claim statement and Union no. 3 filed separate claim statement. The contentions and averments are common in both the claim statements. The workmen in the industrial dispute are employees, employed in the work of loading and unloading of gas cylinders at Bharat Petroleum Corporation Ltd, LPG Bottling Plant at Kazhakkoottam in Trivandrum through various transporting contractors who are the immediate employers. These contractors are members of the management, which is an association of transporting contractors. M/s.BPCL is the principal employer. The terms of conditions of service of the subject workmen are governed by the conciliation settlements entered into between the transporting contractors on one side as the employer and Unions on the other side in the presence of the Conciliation Officer under ID Act 1947. A representative of the principal employer, BPCL is also represented in the proceedings. The workmen herein were paid bonus by way of customary bonus @17% for the year 1995-96, 18% in 1996-97, 19% for the year 1997-98 and @20% for the years from 1999 onwards. Such bonus is being paid as a customary bonus by way of convention and not merely as profit sharing bonus or as bonus by virtue of provisions in the Bonus Act, 1955. The customary bonus is being paid to the workman taking into account in the peculiar nature of work in the industry. The bonus being paid to the workman irrespective of profits and earnings and also without regard for elements of profits, income or earnings, by way of convention on the occasion of Onam festival in the State of Kerala. This is being paid consistently and continuously for nearly two decades with all having recognized it as a payment by way of custom and convention and also recognizing it as an integral part of conditions of service of the workmen. In the year 2013-14, 2014-15 and 2015-16 the management transporting contractors reduced the bonus to 16% and the difference of 4% is retained by principal employer from the payments due to the transporting contractors subject to a final decision in this industrial dispute. The workmen are entitled for 20% bonus for the year 2013-14, 2014-15 and 2015-16 by way of customary bonus as was paid for them by

way of convention and custom. This is particularly so as the entitlement has matured into a condition of service which cannot be unilaterally altered by the management at their will and pleasure. The unilateral decision of the management to deny 20% of the total wages as bonus is illegal and amounts to the management unilaterally changing the conditions of service applicable to the workmen in contravention of Sec 9(A) of ID Act, 1947. The unilateral change proposed by the management is in contravention of Sec 9(A) of ID Act, 1947 and is therefore void and is unenforceable. The denial of 20% bonus amounts to unfair labour practice. The management is seeking to deny 20% bonus on the false premise that workmen are surplus, the contractors are running on loss and also claiming that the provisions of Payment of Bonus Act, 1965 is applicable. There is no truth in the claim of the management that there is excess workmen and the claim of the management that they are running under loss is false and incorrect. Further the claim of extension of benefits under Payment of Bonus Act also is not correct since the bonus paid to the workmen was by way of convention and custom which matured into a contract of service where the element of profit or provisions of Payment of Bonus Act do not apply. The workmen are entitled to the difference in bonus @4% with interest @18% per annum from 15.10.2013.

4. With regard to the issue referred for adjudication the Unions submitted that it pertains to works of unloading of newly manufactured cylinders brought to the LPG bottling plant by the manufacturers. The above work is done by the workman as required by the principal employer through the manufacturers of the cylinders which is beyond the scope of the duties and works of the transporting contractors. These works are done by the workmen when they are not supposed to do the work of management, transporting contractors. The above work in no way hinders the work of the transporting contractors. The management has no locus standi to raise any contention or plea with regard to the other works done by the workmen as per the instructions of the principal employer and no consent or permission is required from the management to discharge such works by the Union.

5. Management 1 remained exparte from the very beginning as they did not enter appearance after acknowledging summons. The matter was posted on 06.02.2009 finally for written statement of Management 2. There was no representation for Management 2 and hence the Management 2 was also called absent and set exparte. There after the matter was posted to 20.03.2009, 13.05.2019, 04.07.2019 and 03.09.2019. There was no representation for Management 1 as well as Management 2 and they remained exparte. The matter was posted to 29.10.2019 and Union examined WW1 and marked exhibits W1 to W7. The matter was further adjourned to 26.11.2019 and 14.01.2020. There was no representation on the side of Managements 1 & 2 and hence heard the Counsel for Union and taken the matter for award. The matter remained uncontested.

6. The issue to be adjudicated is;

"Whether the Union is entitled for 20% bonus for the year 2015-16 or whether the workmen are entitled to only minimum bonus of Rs.7000/- as claimed by managements ? "

7. **Issue No. 1**

The claim of 20% bonus upto 2014-15 was subject matter of ID no.19/2016 and it was decided that the Unions/workmen were entitled for bonus of 20% for the year 2013-14 and 2014-15, in the absence of any evidence on the side of the managements to substantiate their claim of losses. In the present industrial dispute the Unions are claiming extension of 20% bonus for the year 2015-16 also. The managements failed to file even a counter to deny the claim of the Unions. There is absolutely no defence or evidence on the side of the managements to disprove the claim of the Unions. The Union succeeded in proving on the other hand that they were being paid 20% bonus from 1999 to 2013. The managements disputed the claim of 20% bonus only after they formed an association in the year 2014. It was up to the managements to prove that the workmen/Union are entitled only for a minimum bonus @Rs.7000/-. The managements remained exparte and failed to contest the claim of the Unions that they are entitled for a bonus of 20% for the year 2015-16.

Hence the issue is answered in favour of Unions holding that they are entitled for a bonus of 20% for the year 2015-16. Hence the issue is decided in favour of the Unions and against the Managements.

Hence an award is passed holding that the Union/workmen is entitled for a bonus of 20% for the year 2015-16.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 4th day of February, 2020.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the Workman:-

WW1 - Shri. Justin Fernandez, dt. 29.10.2019

Exhibits for the Workman:-

W1 - True copy of the Memorandum of Settlement dt.11.01.1996 between Transporting Contractors operating in BPCL LPG Filling Plant, Kazhakkoottom and their loading and unloading contract workers before the Assistant Labour Commissioner (Central), Trivandrum

W2 - True copy of the Memorandum of Settlement dt.28.12.1998 between Transporting Contractors operating in BPCL LPG Filling Plant, Kazhakkoottom and their loading and unloading contract workers before the Assistant Labour Commissioner (Central), Trivandrum

W3 - True copy of the Memorandum of Settlement dt.17.01.2002 between the loading, unloading and Transporting Contractors of BPCL Bottling Plant, Kazhakkoottom and their Trade Unions before the Assistant Labour Commissioner (Central), Trivandrum

W4 - True copy of the Memorandum of Settlement dt.25.04.2005 between the loading, unloading and Transporting Contractors of BPCL Bottling Plant, Kazhakkoottom and their four Trade Unions before the Assistant Labour Commissioner (Central), Trivandrum

W5 - True copy of the Memorandum of Settlement dt.15.05.2008 between the M/s. Ammu Transport Coporation and loading and unloading contractors of LPG Bottling Plant of M/s. BPCL, Kazhakkoottom and their Trade Unions before the Assistant Labour Commissioner(Central), Trivandrum

W6 - True copy of the Memorandum of Settlement dt.10.03.2011 between the M/s. Sreenilayam Transports, Contractor at M/s. BPCL LPG Plant, Kazhakkoottom and their workmen before the Assistant Labour Commissioner(Central), Trivandrum.

W7 - True copy of the Memorandum of Settlement dt.10.03.2011 between the M/s. Devamatha, Contractor at M/s. BPCL LPG Plant, Kazhakkoottom and their workmen before the Assistant Labour Commissioner (Central), Trivandrum.

नई दिल्ली, 9 अक्तूबर, 2020

का. आ. 944.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. भारत पैट्रेलियम कोरपोरेशन लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, ईरनाकुलम, कोचीन के पंचाट (संदर्भ सं. 19/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.10.2020 को प्राप्त हुआ था।

[सं. एल-30011/12/2016-आईआर (एम)]

नवीन वैध, उप निदेशक

New Delhi, the 9th October, 2020

S. O. 944.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, ERNAKULAM, Cochin as shown in the Annexure, in the industrial dispute between the management of M/s. Bharat Petroleum Corporation Ltd., and their workmen, received by the Central Government on 09.10.2020.

[No. L-30011/12/2016-IR(M)]

NAVIN VAIDYA, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer
(Monday the 10th day of February 2020, 21 Magha 1941)

ID No. 19/2016

Workman/Unions : 1. The General Secretary
All Kerala Head Load Workers Union (AITUC)
Kazhakootam Mandalam Committee
RPN Building, Kazhakootam
Trivandrum – 695582

2. The Vice President
Loading & General Workers Union (INTUC)
BPCL Bottling Plant
Meenamkulam, Kazhakootam
Trivandrum – 695582

3. The Working President
Kerala Petroleum & Gas Workers Union (CITU)
EMS Mandiram, Kalabhavan Road,
Kochi, Ernakulam – 682018
By Adv. Ashok B.Shenoy

Management : The President
All Petroleum Product Transporters
Association
C/o BPCL, Meenamkulam
Kazhakootam
Trivandrum – 695582

By Adv. Millu Dandapani

This case coming up for final hearing on 14.01.2020 and this Tribunal-cum-Labour Court on 10.02.2020 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-30011/12/2016-IR(M) dated 10.06.2016 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

"A) Whether it is fair and proper that workmen in the instant Industrial Dispute be paid bonus @20% in view of the convention or whether the contractors are right in maintaining that the eligibility in this regard should be limited to 8.33% only in view of their financial position.

B) Whether the action of the workmen in the Dispute handling the new cylinders brought in by outside contractors and collecting the handling charges from them without knowledge and permission of the contractors in the instant dispute is fair and proper''.

3. Union no. 1 & 2 filed common claim statement and Union no.3 filed separate claim statement. The contentions and averments are common in both the claim statements. The workmen in the industrial dispute are employees employed in the work of loading and unloading of gas cylinders at Bharat Petroleum Corporation Ltd, LPG Bottling Plant at Kazhakkoottam in Trivandrum through various transporting contractors who are the immediate employers. These contractors are members of the association of transporting contractors. M/s. BPCL is the principal employer. The terms and conditions of service of the subject workmen are governed by the conciliation settlements entered into between the transporting contractors on one side as the employer and Unions on the other side in the presence of the Conciliation Officer under ID Act 1947. A representative of the principal employer, BPCL is also represented in the proceedings. The workmen were paid bonus by way of customary bonus @17% for the year 1995-96, 18% in 1996-97, 19% for the year 1997-98 and @20% for the

years from 1999 onwards. Such bonus is being paid as a customary bonus by way of convention and not merely as profit sharing bonus or as bonus by virtue of provisions in the Payment of Bonus Act 1965. The customary bonus is being paid to the workman taking into account in the peculiar nature of work in the industry. The bonus was being paid to the workman irrespective of profits and earnings and also without regard for elements of profits, income or earnings, by way of convention on the occasion of Onam festival in the State of Kerala. This is being paid consistently and continuously for nearly two decades with all having recognized it as a payment by way of custom and convention and also recognizing it as an integral part of conditions of service of the workmen. In the year 2013-14 and 2014-15 the management, transporting contractors reduced the bonus to 16% and the difference of 4% is retained by principal employer from the payments due to the transporting contractors subject to a final decision in this industrial dispute. The workmen are entitled for 20% bonus for the year 2013-14 and 2014-15 by way of customary bonus as was paid to them by way of convention and custom. This is particularly so as the entitlement has matured into a condition of service which cannot be unilaterally altered by the management at their will and pleasure. The unilateral decision of the management to deny 20% of the total wages as bonus is illegal and amounts to the management unilaterally changing the conditions of service applicable to the workmen in contravention of Sec 9(A) of ID Act, 1947. The denial of 20% bonus amounts to unfair labour practice. The management is seeking to deny 20% bonus on the false premise that workmen are surplus, the contractors are running on loss and also claiming that the provisions of Payment of Bonus Act, 1965 is applicable to the workmen. There is no truth in the claim of the management that there is excess workmen and the claim of the management that they are running under loss is false and incorrect. Further the claim of extension of benefits under payment of Bonus Act also is not correct since the bonus paid to the workmen was by way of convention and custom which matured into a contract service where the element of profit or provisions of payment of Bonus Act do not apply. The workmen are entitled to the difference in bonus @4% with interest @18% per annum from 15.10.2013.

4. With regard to the issue referred for adjudication the Unions submitted that it pertains to works of unloading of newly manufactured cylinders brought to the LPG bottling plant by the manufacturers. The above work is done by the workman as required by the principal employer through the manufacturers of the cylinders which is beyond the scope of the duties and works of the transporting contractors. These works are done by the workmen when they are not supposed to do the work of management, transporting contractors. The above work in no way hinder the work of the transporting contractors. The management has no locus standi to raise any contention or plea with regard to the other works done by the workmen as per the instructions of the principal employer and no consent or permission is required from the management to discharge such works by the Union.

5. The management filed written statement denying the above allegations. The management denied the claim of the Unions that they were paying bonus as at various rates from 1995-96 to 1997-98 and @20% from 1999 onwards. The management association itself came into existence only in the year 2014 after its formation on 03.09.2014. The management association entered into a contract with BPCL in the year 2014 for transporting LPG cylinders. After the commencement of the work the management found that they will not be in a position to execute the contract in view of various issues and particularly because of series of labour disputes. Hence the agreement was pre-closed by BPCL. The trade union workmen are not the workmen engaged by management association. The contribution to provident fund and ESI has been paid by BPCL, the principal employer and the said amount is being deducted from the bill amount payable to the management association by BPCL. There is no contract or agreement between the management association and the union workmen. The attendance of the trade union workmen are being marked in the main gate of the BPCL and the management is unaware of the attendance of the trade union workmen. The workmen were employees of BPCL when the construction of the factory was going on and after completion of the plant, they were retained as head load workers in BPCL, Kazhakkoottom plant. There is no question of customary bonus as the management never paid customary bonus to the workmen. The bonus paid by the management to the workmen are only advance bonus after conciliation proceedings by the Regional Labour Commissioner and District Collector, Trivandrum. It is not possible for the management association to pay 20% bonus as a convention since there is excess number of workers engaged at BPCL Kazhakkoottom. The actual requirement of workmen for the above work and as per the work load is only 24 where as the total number of workmen deployed is 72. This issue was brought to the notice of Regional Labour Commissioner, Secretary to Govt, Regional Managers BPCL etc. Since there was no fruitful action, the management association moved the Hon'ble High Court of Kerala in W.P.(C).no.22253/2016. 72 workers were originally engaged for handling cylinders, housekeeping, for removal of bend of cylinders etc. Now these 72 workers are being engaged only for loading and unloading works. Hence additional workers are being engaged to attend the works other than loading and unloading. For transporting four truck load of cylinders a day, the actual number of workers required is only 24. When the telescopic conveyer is installed, the required manpower for loading and unloading will come down to 16. Since this issue is under the consideration of the Hon'ble High Court of Kerala the dispute regarding the payment of bonus may be decided only after the final decision by the Hon'ble High Court. The management association is required to pay bonus only @8.33% taking into

account the financial position of the management. It is not feasible to pay bonus @20%. The Joint Secretary of the management association has sustained a loss of Rs.71,72,300/- during the assessment year 2013-14 and Rs.56,47,226/- for the year 2014-15. Hence it is not possible to pay bonus at the rate claimed by the Union. According to management, as per the tender awarded for the year 2014 there will be a loss of Rs.1132.78 per load. Hence it can be seen that the management association is running under loss from the very beginning. And accordingly the tender which was originally for a period of 3 years was limited to a period of 2 years. Subsequent to the year 2007 the workmen were not making their due contribution towards PF and ESIC. Hence the principal employer is collecting the respective share from the contractors who are doing the transportation.

6. The management has not raised any objection regarding issue no.B in the reference with regard to the dispute of handling the new cylinders brought in by outside contractors and collecting handling charges from them without the knowledge and permission of the management association.

7. The Unions filed replication reiterating their original claim and denying the allegations in the written statement filed by the management.

8. The management association filed an IA no.172/2016 with a request to implead the Territory Manager-LPG, BPCL as a party to the proceedings. After hearing the Unions and the management, it was decided that as per the provisions of Payment of Bonus Act, the contract labourers are not employees of the principal employer and there is no privity of contract between the principal employer and the contract labourers and therefore request for impleading BPCL was rejected. The matter was being posted for evidence from 10.02.2017. There was no representation for the management from 02.05.2019 onwards. On 20.08.2019 the Union examined WW1 and marked Exbt. W1 to W7. There was no representation for the management and the Union witness was also not cross examined by the management. The matter was finally posted for the evidence of management on 03.10.2019 and there was no representation on the side of the management on that day also. Hence the management is called absent and declared exparte. The matter was adjourned and finally posted to 22.11.2019 for hearing. There was no representation from the side of the management on 22.11.19 also. Hence the matter was finally adjourned to 14.01.2020 for hearing. There was no representation on the side of the management. Therefore, heard the learned Counsel for the Union and the matter is taken up for award.

9. On the basis of the pleadings the following issues are framed for decision.

a. Whether the workmen of the Union are entitled for 20% bonus in view of convention or whether the bonus can be limited to 8.33% in view of the financial position of the management ?

b. Whether the action of the Union in handling the new cylinders brought in by outside contractors and colleting handling charges from them without the knowledge and permission of the management association is fair and proper?

10. <u>Issue No. 1</u>

According to the Union, they were being paid a customary bonus of 17% in the year 1995-96, 18% in the year 1996-97, 19% in the year 1997-98 and @ 20% for the years from 99 onwards. According to the learned Counsel for the Unions, the customary bonus was being paid unrelated to the profit or to the provisions of the Payment of Bonus Act, 1965. They were being paid the customary bonus of 20% from 1999 to 2012-13 without any consideration of the profit or the provisions of the Payment of Bonus Act. In the year 2013-14 the management objected to the payment of 20% bonus and offered 16% bonus which is one of the subject matter of this dispute. According to the Union, the 4% difference payable by the management association is retained by the principal employer subject to a final decision in this dispute. Though the management remained exparte, they filed counter denying the above claim of the Union. They denied the claim of the Union that bonus was being paid @20% by the management from the year 1999. According to them the management association came into existence only in 2014 and hence the claim of the Union that bonus was being paid by management from 1999 is not correct. It is seen from the documents produced by the workmen that prior to 2014 there used to be settlement U/s 12(3) of the ID Act with individual contractors and the Union on various issues including the rates of wages and the bonus payable in each year. As per Exbt. W1, it is seen that 17% bonus was agreed for the year 1995-96 and 18% for 1996-97 and 19% for the year 1997-98. As per Exbt. W2, it is seen that it was agreed to pay 20% bonus for1999-2000 and 2001. As per W3 settlement, it is seen that bonus was agreed to be paid @ 19% for the year 2002, 2003, 2004. As per Exbt.W4 settlement, it was agreed to pay 20% for the year 2005, 2006, 2007. As per W5 settlement it was agreed to pay @20% bonus for the years 2007-2008, 2009-10 and as per Exbt.W6 settlement it was agreed to pay 20% bonus for the years 2010-11, 2011-12, 2012-13. Hence it can be seen from the Union exhibits that the workmen were being paid bonus @20% from 1999 till

2012-13 by individual transport contractors. In the year 2014 the individual transporting contractors formed an association and disputed the claim of the Union saying that they will not be in a position to pay more than 16% in view of loss sustained by them during the relevant point of time. Finally on the basis of a settlement dt.25.05.2015 before the District Collector, Trivandrum, it was agreed that the 16% bonus advance will be paid to the workmen and an amount equal to 4% of bonus will be paid by the management to the workmen subject to final decision in the industrial dispute.

11. The management in their written statement claimed that they are running under loss and they also furnished certain calculations allegedly to establish their claim. However when the management was offered an opportunity to adduce evidence and substantiate their claim of loss, the same was not availed by management and no evidence to support the claim of loss was produced by the management. Hence the claim of the Unions that they are entitled to 20% customary bonus fairly remain uncontested. Had the management association be serious about their claim of financial loss, they should have substantiated their claim by proving the losses and proving the calculation shown in the written statement filed by them. Having remained exparte at the stage of evidence and also hearing they cannot claim that the bonus paid to the Unions need be unilaterally reduced in view of the alleged claim of losses and also the excess number of workmen.

Hence in view of the pleadings and evidence on the issue, I am inclined to hold that the Unions are entitled for 20% bonus for the year 2013-14 and 2014-15.

12. Issue No. 2

The issue referred for adjudication is whether the workman is justified in handling new cylinders brought in by outside contractors and collecting handling charges without the knowledge and permission of the management association. According to the Union, they are handling the work of unloading newly manufactured cylinders brought into the LPG Bottling Plant by the manufacturer as pre the directions of the principal employer. It is done beyond the scope of duties with the management association and this work is done beyond the working hours with the management association and without affecting in any way the work of the management association. According to the learned Counsel for the Union in the circumstances of the case, no consent or permission is required from the management association for doing the work beyond the scope of the contract with the management association and without hindering the work of the management association. The claim of the Union is not at all disputed by the management even in the written statement filed by them as already stated. Even otherwise the management remained exparte and did not adduced any evidence or argued against the claim of the Unions right to do the extra work of unloading cylinders from the manufactures.

Hence the issue is answered in favour of the Union and against the management holding that it is fair and proper on the part of the Union/workmen in handling the new cylinders brought in by outside contractors and collecting handling charges from them without the knowledge and permission of the management.

Hence an award is passed holding that the Union/workmen is entitled for bonus of 20% for 2013-14 and 2014-15. The difference in bonus shall be paid to the workmen within one month of notification of the award failing which the Management will be liable to pay the bonus with 12% interest from the due date till the date of payment. It is fair and proper on the part of the Union workmen handling the new cylinders brought in by outside contractors and collecting handling charges from them without the knowledge and permission of the Management association.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 10th day of February, 2020.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the Workman:-

WW1 - Shri.Justin Fernandez, dt.20.08.2019

Exhibits for the Workman:-

W1 - True copy of the Memorandum of Settlement dt.11.01.1996 between Transporting Contractors operating in BPCL LPG Filling Plant, Kazhakkoottom and their loading and unloading contract workers before the Assistant Labour Commissioner (Central), Trivandrum.

W2 - True copy of the Memorandum of Settlement dt.28.12.1998 between Transporting Contractors operating in BPCL LPG Filling Plant, Kazhakkoottom and their loading and unloading contract workers before the Assistant Labour Commissioner (Central), Trivandrum

W3 - True copy of the Memorandum of Settlement dt.17.01.2002 between the loading, unloading and Transporting Contractors of BPCL Bottling Plant, Kazhakkoottom and their Trade Unions before the Assistant Labour Commissioner (Central), Trivandrum

W4 - True copy of the Memorandum of Settlement dt.25.04.2005 between the loading, unloading and Transporting Contractors of BPCL Bottling Plant, Kazhakkoottom and their four Trade Unions before the Assistant Labour Commissioner (Central), Trivandrum

W5 - True copy of the Memorandum of Settlement dt.15.05.2008 between the M/s. Ammu Transport Corporation and loading and unloading contractors of LPG Bottling Plant of M/s. BPCL, Kazhakkoottom and their Trade Unions before the Assistant Labour Commissioner (Central), Trivandrum

W6 - True copy of the Memorandum of Settlement dt.10.03.2011 between the M/s. Sreenilayam Transports, Contractor at M/s. BPCL LPG Plant, Kazhakkoottom and their workmen before the Assistant Labour Commissioner (Central), Trivandrum

W7 - True copy of the Memorandum of Settlement dt.10.03.2011 between the M/s. Devamatha, Contractor at M/s. BPCL LPG Plant, Kazhakkoottom and their workmen before the Assistant Labour Commissioner (Central), Trivandrum.

नई दिल्ली, 13 अक्तूबर, 2020

का.आ. 945.—राष्ट्रपति, श्री श्याम सुंदर गर्ग, पीठासीन अधिकारी, केन्द्रीय सरकार औद्योगिक अधिकरण सह श्रम न्यायालय, नागपुर को सौंपे गए केन्द्रीय सरकार औद्योगिक अधिकरण सह श्रम न्यायालय, सं. 2, मुंबई के पीठासीन अधिकारी के अतिरिक्त प्रभार की अवधि दिनांक 19.10.2020 से छ: माह तक अथवा पद पर नियमित नियुक्ति तक अथवा अगले आदेशो तक, इनमे जो भी पहले हो तक बढ़ाते है।

[सं. अ-11016/02/2019-सीएलएस-II]

एस. के. कालड़ा, उप सचिव

New Delhi, the 13th October, 2020

S. O. 945.—The President is pleased to extend the additional charge of the post of Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court No.2, Mumbai entrusted to Shri Shyam Sunder Garg, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Nagpur for a further period of six months with effect from 19.10.2020, or till the regular appointment to the post, or until further orders, whichever is the earliest.

[No. A-11016/02/2019-CLS-II]

S. K. KALRA, Dy. Secy.

नई दिल्ली, 13 अक्तूबर, 2020

का.आ. 946.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार धनलक्ष्मी बैंक लि. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एर्नाकुलम के पंचाट (संदर्भ संख्या 31/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.10.2020 प्राप्त हुआ था।

[सं. एल-12012/26/2018-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 13th October, 2020

S. O. 946.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Ernakulam as shown in the Annexure, in the industrial dispute between the management of Dhanalakshmi Bank Ltd. and their workmen, received by the Central Government on 13.10.2020.

[No. L-12012/26/2018-IR(B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer
(Friday the 20th day of March 2020, 30 Phalguna 1941)

ID No. 31/2018

Workman : Shibu Chandrababu
Chandra Nivas
Gurunagar
Manambur P.O.
Varkala Taluk – 695611

By Adv. M. S.Vijayachandra Babu

Management : The Managing Director
Dhanalakshmi Bank Ltd.
Dhanalakshmi Building
Thrissur – 680001

By M/s. B.S. Krishnan Associates

This case coming up for final hearing on 20.03.2020 and this Tribunal-cum-Labour Court passed the following on the same date :

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-12012/26/2018-IR(B-I) dated 16.11.2018 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

"Whether the aggrieved Shri.Shibu Chandrababu is a workman under Section 2(S) of the ID Act ? and if so, whether the action of the management of Dhanalakshmi Bank in terminating his services vide order dated 23.12.2012, is fair and justified ? If not, to what relief he is entitled to ?''.

3. After receipt of the reference it was numbered and notices were issued to both the workman and also the management. On 11.02.2019 both the parties entered appearance. Hence the matter is adjourned for filing of claim statement by the workman. The matter was adjourned on many occasions and workman remained absent on many of the occasions. Finally the matter was posted to 15.10.2019 for filing claim statement. There was no representation on the side of the workman on that day and hence the workman was set ex-party. The workman filed an IA no.538/2019 for setting aside the ex-party order. The workman further filed another IA no.539/2019 to take up the matter in the camp sitting at Trivandrum. The management was offered an opportunity to file counter on both the IAs. The management filed counter opposing both the IAs. It was pointed out that the petitioner/workman filed a Civil Suit in OS.no.4536/2011 before the Munsiff Court, Trichur on the same issue and the same was dismissed for default with cost to the management. Again the matter was restored to file and again dismissed for default with cost to the respondent. When the IAs were taken up for hearing the workman filed an affidavit dt.16.03.2020 stating that he is not interested in adjudicating the industrial dispute and praying that the matter may treated as closed and an Award may be passed to the effect that the workman was not interested in adjudicating the matter.

4. Since the workman is not interested in adjudicating the dispute referred to this Tribunal, it is not possible to adjudicate the dispute referred to this Tribunal. In the above circumstances a 'no dispute' Award is passed and the reference is answered accordingly.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 20th day of March, 2020.

V. VIJAYA KUMAR, Presiding Officer

नई दिल्ली, 13 अक्तूबर, 2020

का.आ. 947.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोलकता के पंचाट (संदर्भ संख्या 13/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.10.2020 प्राप्त हुआ था।

[सं. एल-12025/01/2020-आईआर (बी-1)]
डी. गुहा, अवर सचिव

New Delhi, the 13th October, 2020

S. O. 947.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 13.10.2020.

[No. L-12025/01/2020-IR(B-1)]

D. GUHA, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Application No. CGIT-13 of 2018
(Under Section 2A(2) of the I.D. Act, 1947)

Parties: Shri Dinanath Mishra, Son of Late Sudarshan Mishra,
Vill. Sabuj Pally, P.O. Belda,
Dist. Paschim Medinipur,
Pin – 721424. …Applicant

Vs.

1. M/s. Singh Intelligence Security Pvt. Ltd.
36, R.N.R.C. Ghatt Road,
Shibpur, Howrah – 711102.

2. The Assistant General Manager,
ATM Deptt., LHO State Bank of India,
7th Floor, Strand Road Branch,
Kolkata – 700001. …Opp. Parties

Present: Justice RavindraNath Mishra, Presiding Officer

Appearance:

On behalf of the Applicant : Mrs. J. Dhar Quader, Learned Counsel.

On behalf of the Opp. Parties :

State: West Bengal. Industry: Banking

Dated: 24th June, 2020

AWARD

This application has been moved by the Applicant, Shri Dinanath Mishra under Section 2A(2) of the Industrial Disputes Act, 1947 (hereinafter referred as the Act of 1947 for convenience) against his illegal termination.

2. The case of the Applicant is that he was working under M/s. Security Intelligence Service (India) Pvt. Ltd. since 2010 and was posted as Caretaker of ATM Kaushallya at Kharagpur of Opposite Party No. 2. It is also pleaded that the Opposite Party No. 1 never issued any appointment letter or salary slip to the Applicant. The applicant received only Rs.4957/= in the month of April, 2016 only Rs. 4957/= as one month's salary instead of Rs.7072/=. No salary slip was given to him. The Opp. Party No. 1 on 13th June, 2016 issueda letter to the Applicant that ATM Kaushallya was left vacant by him during night in a routine basis, therefore, he was called upon to clarify in writing. The Applicant submitted his reply. After receiving applicant's reply, the Opp. Party No. 1 did not call him to join duty, nor paid any salary. Therefore, the applicant informed his union, "All Bengal Contractual Security Guard Workers Development Union". The union took up the case to the Assistant Labour Commissioner (Central), Kolkata who issued notice to the Opposite Parties. But Opposite party No. 2 never appeared during conciliation proceeding. Representative of Opposite Party No. 1 appeared before the Assistant Labour Commissioner and during conciliation agreed to redeploy the Applicant, but no appointment letter was ever issued to the Applicant. Therefore, after expiry of 45 days the Conciliation Officer issued a certificate under Section 2A(2) of the Act of 1947 to file this application under Section 2A.

3. Opp. Party No. 1 did not appear before this Tribunal. Opp. Party No.2 filed its written statement challenging the maintainability of the application on the ground that the Applicant is not an employee of State Bank of India. Opp. Party No. 1 is a private organization, therefore, the Central Government is not the appropriate Government. Relationship of employer and employee was also challenged. It is further pleaded in the written statement that the State Bank of India had no say in transfer, posting and termination of the Applicant. Opposite Party No. 2 only engaged Opposite Party No.1 to provide service as per agreed terms and conditions which does not involve dealing with a particular workman as an individual, but the contractor as a whole to provide contractual service.

4. In reply to the written statement the Applicant filed his rejoinder stating that M/s. Singh Intelligence Security Private Ltd. Opposite Party No.1 is a contractor of principal employer, State Bank of India and the Applicant workman had been working under the supervision of the principal employer till his illegal and unjustified termination of services, therefore, Central Government is the appropriate Government.

5. At the stage of evidence, both the Opposite Parties remained absent, therefore, the case proceeded *ex parte* against the Opposite Parties. The Applicant filed his affidavit-in-evidence. He has also filed several documentary evidences Exhibits W-01 to W-18 which shall be taken up at the appropriate stage.

6. I have heard the Applicant.

7. Since maintainability of this application has been challenged by the Opposite Party No. 2, it would be apposite to take up the point of maintainability before entering into merit of the case. The Opposite Party No. 2, the State Bank of India has challenged the maintainability of this application on the ground that the Applicant was employee of Opposite Party No. 1, a private contractor, therefore, Central Government is not appropriate Government. "Appropriate Government" has been defined under Section 2(a) of the Act of 1947 which means in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, the Central Government is the appropriate Government. Though the Applicant has said that he was engaged by the Opposite Party No. 1, but in his rejoinder he has mentioned that State Bank of India being principal employer exercised supervision and control over him. Therefore, State Bank of India is accountable for all the consequences of the immediate employer. As the Applicant has claimed relief against the State Bank of India also, therefore, the dispute as raised by the Applicant concerns banking industry which is carried on under the authority of the Central Government. Therefore, I am of the view that the Central Government is the appropriate Government and this application is very well maintainable before this Tribunal.

8. The Applicant has submitted that his services has been terminated without holding any domestic enquiry after submission of reply to the show cause notice by the Applicant. He was not called upon to join duty, nor any salary was paid to him. Striking off the name of a workman from the rolls by the employer has been held as termination of service within the meaning of Section 2(oo) of the Act of 1947 by the Hon'ble Supreme Court in **H.D. Singh** v. **Reserve Bank of India & Others**, AIR 1986 SC 132. Thus the termination of service of the workman in the present case is retrenchment within the meaning of Section 2(oo) of the Act of 1947. Therefore, compliance of provisions of Section 25F of the Act of 1947 was necessary before terminating the services of the Applicant.

9. Section 25F of the Act of 1947 may be quoted as below –

"**25F. Condition precedent to retrenchment of workmen** – No workman employed in an industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until –

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of notice;

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

10. Now, before examining the compliance of provisions of Section 25F of the Act of 1947, it is necessary to look into whether the workman concerned has been in continuous service for not less than one year which is condition precedent for application of provisions of Section 25F of the Act. If the answer is in affirmative,then only clause (a) and (b) of Section 25F of the Act of 1947 would apply.

11. "Continuous service" has been defined in Section 25B of the Act of 1947 according to which where a workman is not in continuous service within the meaning of clause (1) of Section 25B for the period of one year or six months, he shall be deemed to be in continuous service, when he is actually worked for not less than 240 days. In the present case, the Applicant has said nothing about his continuous service. He has merely submitted that he has been working as Security Guard under the Opposite Party No. 2 since 2010. Therefore, burden lies on the Applicant to prove that he has actually worked for not less than 240 days in the year preceding the date of his termination.

12. On the question of burden of proof as to the completion of 240 days of continuous work in the preceding year, Hon'ble the Apex Court in **Range Forest Officer** v. **S.T. Hadimani**, 2002 (93) FLR 179 has held that –

"In our opinion the Tribunal was not right in placing onus on the management without first determining on the basis of cogent reason evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but his claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had, in fact, worked for 240 days in the year preceding his termination. Filing an affidavit is only his ownstatement in his favour and that cannot be recorded as sufficientevidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receiptof salary or wages for 240 days or order or record of appointment orengagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

13. In **Rajasthan State Ganganagar S. Mills Ltd**. v. **State of Rajasthan & Another**, 2004 (4) LLN 845,**Municipal Corporation, Faridabad** v. **Srinibas**, 2004 (4) LLN 785 and **Madhya Pradesh Electricity Board** v. **Hariram**, 2004 (4) LLN 839 Hon'ble the Apex Court reiterated the principles that burden proof lies on the workman to show that he had worked continuously for 240 days in the preceding one year prior to his alleged retrenchment and it is for the workman to adduce evidence apart from examining himself to prove that the factum of his being in employment of the employer.

14. Referring and analyzing these earlier judgments in above case laws Hon'ble the Apex Court in **R.N. Yellatti** v. **The Assistant Executive Engineer**, reported in Supreme Court Cases (L&S) page –1 again held that burden lies on the workman concerned the relevant paragraphs of the judgment may be quoted as under:

"Analyzing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness

box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wage earlier, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions, however make it clear that mere affidavit or self serving statements made by the claimant/workman were not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon facts of each case."

15. Now coming to the facts of the present case, the Applicant has not filed any document to show that he worked for 240 days preceding the date of his alleged termination viz. April, 2016. He has filed only photo copy of two identity cards issued by the Opposite Party No. 1, M/s. Singh Intelligence Security Private Ltd., Ext. W-01 which also do not establish that he worked for 240 days as identity card were issued on 17th April, 2016 and on 14th July, 2017. Admittedly the Applicant worked only till June, 2016. Copy of memo, Ext. W-02 also shows that the Opposite Party No. 1 issued memo, Ext. W-2 on 13th June, 2016. Therefore, as per Applicant's version he was not called on duty, neither he was paid salary. Rest of the documents which have been filed on record, are either representations made by the Applicant or record of proceedings of conciliation from which also it is not established that he had worked for 240 days. No salary slip has been filed by the Applicant to fortify his case. Therefore, it is established that the Applicant cannot be said to be in continuous service as provided in Section 25F of the Act of 1947.

16. In these circumstances, the Applicant is not entitled for protection as provided in Section 25F of the Act of 1947 and, therefore, the application moved by the Applicant under Section 2A(2) of the Act of 1947 is liable to be dismissed.

17. The application, as above, is dismissed.

18. Award is passed accordingly.

Dated, Kolkata,

The 24th June, 2020

Justice RAVINDRA NATH MISHRA, Presiding Officer

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